S. HRG. 99-934

NOMINATIONS OF JANET D. STEIGER, JAMES E. COLVARD, AND MARY F. WIESEMAN

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF MRS. STEIGER, TO BE A MEMBER OF THE POSTAL RATE COMMISSION; MR. COLVARD, TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT; AND MRS. WIESEMAN, TO BE SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD

AUGUST 6, 1986

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NOMINATIONS OF JANET D. STEIGER, JAMES E. COLVARD, AND MARY F. WIESEMAN

WEDNESDAY, AUGUST 6, 1986

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met at 2:17 p.m. in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens presiding.

Present: Senators Stevens, Durenberger, Eagleton, and Levin.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. I am sorry for the delay. We are here this afternoon to receive testimony from nominees for three key Federal positions. The first is Janet Steiger, an old friend, who has been nominated for reappointment to the Postal Rate Commission.

The Postal Rate Commission plays an important role in establishing our postal rates. Since the Postal Reorganization Act of 1970, they have established themselves as significant players in determining what rates shall be charged to postal consumers.

The second two nominations are for individual agencies that have existed for less than 10 years. The Civil Service Reform Act of 1978 completely revised both personnel management and administration in the Federal sector. It broke up the many faceted role of the Civil Service Commission into independent agencies. Those roles are well defined, with employee advocacy and protection being handled by the Merit Systems Protection Board and the Office of Special Counsel, and the traditional personnel administration functions put in the Office of Personnel Management.

The nominee for the Deputy Director of OPM is James Colvard. OPM is opening an important era in the implementation of the new Federal employees retirement system, especially in advising pre-1984 employees of the options available to them. In addition, such issues as pay reform, simplified personnel management, delegated classification authority and a new concept in contracting out are just a few of the issues that it is involved in.

Our final nominee will be Mary Wieseman to be Special Counsel, Office of Special Counsel. The OSC is an investigatory and prosecutorial agency which litigates before the Merit Systems Protection Board.

I am pleased to see we have a series of our colleagues here ready to introduce their nominees.

Senator Eagleton has a statement that will be placed in the record at this point.

[Senator Eagleton's opening statement follows:]

OPENING STATEMENT OF SENATOR EAGLETON

Mr. Chairman, this afternoon we consider three nominations. Two of these nominations are for two of the most important positions established by the Civil Service Reform Act of 1978: The Deputy Director of the Office of Personnel Management and the Special Counsel to the Merit Systems Protection Board. Eight years after this committee reported the legislation establishing them, both agencies have suffered their share of adversity and both now seem to me to be at a crossroads. I am therefore pleased that the President, in nominating Dr. James Colvard and Ms. Mary Wieseman, respectively, has chosen professionals of proven ability for their difficult assignments. The third nomination, the renomination of Mrs. Janet Steiger to the Postal Rate Commission, is also important because of the experience and strong leadership she has brought to the Postal Rate Commission during her previous term.

Dr. Colvard's work is cut out for him. In recent years decisions of OPM directors have curtailed information about job openings; research and development for a valid entrance level examination have been sharply reduced; the number of positions taken out of the competitive service, and transferred to the political Schedule C jobs has more than doubled, and the authority of agencies to make temporary appointments has been greatly expanded. These actions have seriously undermined the first merit principle established by the 1978 Reform Act. Excluding promotions and reassignments, only one in every four vacancies is now filled through open, competitive examinations. Meanwhile, the previous OPM director blindfolded OPM by eliminating almost all compliance inspections, and the agency has not yet recovered from that action. As the Merit System Protection Board said in its most recent annual report on OPM, the lack of OPM inspections at the local level raises serious questions about OPM's ability to uphold the merit system and ensure regulatory compliance.

Dr. Colvard is interested in securing legislation to permit the expansion of experimental personnel programs at China Lake and San Diego to other arenas. While he pursues that goal, Mr. Chairman, I trust he will also use his considerable talents to guarantee that the current civil service laws are faithfully carried out.

The office of the Special Counsel to the Merit Systems Protection Board has also seen its share of controversy. Legislative proposals in both the House and Senate seek significant changes in that portion of the Reform Act. I believe Mrs. Wieseman will be a dedicated and dispassionate leader at a time when the Special Counsel's office could greatly benefit from less heat and much more light.

Finally, Mr. Chairman, Mrs. Steiger has served on the Postal Rate Commission since October 1980. She has been chairman of the Commission since March 1981. Under her leadership the Commission has performed well its independent function of providing a public forum on postal rates and services. The Commission has also produced objective information on the operation of the Postal Service for our use, and this information will become increasingly important as the committee turns to the Postal Service for reconciliation savings. With the guidance of the Rate Commission, I hope we can attain additional savings without crippling the agency. I am pleased Mrs. Steiger will be there to help.

Senator STEVENS. First, the rules of this committee require that all nominees give their testimony under oath. I am going to ask that the nominees to please stand so that they can receive the oath. Raise your right hands.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mrs. WIESEMAN. I do.

Mr. COLVARD. I do.

Mrs. STEIGER. I do.

Senator STEVENS. I see the two Senators from Wisconsin here. You are going to have to decide among yourselves who is first.

Senator KASTEN. We have decided. Senator Proxmire won the flip of the coin.

Senator STEVENS. Age is important, Senator. [Laughter.]

We are pleased to greet you.

TESTIMONY OF HON. WILLIAM PROXMIRE, U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator PROXMIRE. Thank you. I don't know about that age. Maybe it is dirt before the broom or something like that. Anyway, I am delighted to have an opportunity to testify on behalf of Janet Steiger to be reappointed to the Postal Rate Commission.

We are very proud of the Steigers, especially Janet, in Wisconsin. We know of her great intelligence, her dedication to duty and the fine job she has done in the Postal Rate Commission, and so it is an honor for me to have a chance to come here and recommend her.

Thank you.

Senator STEVENS. Thank you very much, Senator.

Senator Kasten.

TESTIMONY OF HON. BOB KASTEN, JR., U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KASTEN. Mr. Chairman, thank you very much. I am also pleased to have this opportunity to introduce to you a friend and someone for whom I have great respect and admiration. I first came to know Janet Steiger during the time that her late husband Bill Steiger, the very distinguished Congressman from Wisconsin's 6th Congressional District, and I served together in the House of Representatives. Long before she became a high-ranking public official here in Washington, Janet Steiger was well known in Wisconsin as an extremely able, intelligent and articulate person who possessed a keen interest and a commitment to good government.

A Phi Beta Kappa who won both a Woodrow Wilson and a Fulbright scholarship, Janet Steiger has been a successful author; she has been a successful teacher; she has been a successful businesswoman and also a successful consultant.

Of course, she has made a tremendous contribution to the work of the administration through her service at the Postal Rate Commission as a Commissioner since October 1980 and as Chairman since March 1981.

Mr. Chairman, I am proud to recommend her reappointment, and I am delighted that President Reagan has chosen to renominate Janet Steiger for another term on the Postal Rate Commission.

Last year, the Federally Employed Women of Washington, DC, awarded Janet Steiger their Outstanding Woman in Government Award, another indication of the excellent reputation she enjoys as the result of her successful work at the Postal Rate Commission.

The job of running this agency requires both ratemaking experience and also sound judgment on the one hand, with good managerial skills for carrying out all of the administrative duties of the agency on the other. It requires a person of keen intelligence, recognized fairness, and strong administrative skills.

Janet Steiger has demonstrated her ability to successfully carry out these responsibilities, and I am delighted to strongly recommend favorable consideration of this nominee by the committee. Mr. Chairman, I thank you very much for the opportunity to appear before you this afternoon.

Senator STEVENS. Thank you very much, Senator Kasten. We appreciate both of you coming.

Janet, do you want to come forward, please?

TESTIMONY OF JANET D. STEIGER, NOMINEE TO BE A MEMBER OF THE POSTAL RATE COMMISSION

Senator STEVENS. Do you have members of your family here with you today?

Mrs. STEIGER. I am very proud to introduce my son Bill Steiger, who is with me, Mr. Chairman.

Senator STEVENS. Bill, very nice to see you here. Thank you very much.

Do you have any statement you would like to make for the hearing record?

Mrs. STEIGER. I have no prepared statement. I would have a few very brief remarks. First I would like to, of course, thank President Reagan for nominating me to this office. It is a high honor to serve the Government. It is a particularly high honor to be renominated to serve.

I would also like to express my deep appreciation to the members of this committee and to your very able and dedicated staff. I am keenly aware of the tremendous demands on your times as a session as complex and demanding as this one comes to the end of its allotted time, and I cannot tell you how much I appreciated the assistance and the cooperation of your staff and your personal staff member, Wayne Schley. I don't see how you managed to do it, but I'm very grateful that you did, and I thank you for that, Senator.

If I may, I have the honor of being able to introduce all four of my colleagues from the Rate Commission who came to hear these proceedings today.

Senator STEVENS. Please.

Mrs. STEIGER. Commissioners Crutcher, Folsom, Tyson, and the newly elected Vice Chair, Bonnie Guiton. I would not be here without these people. Their dedication and their abilities makes even me look good, sir, and thank you.

Senator STEVENS. Well, thank you very much. I have met all of your colleagues and you, and I think the record should show we have a conflict of interest: We were neighbors for many years more than we would like to admit and I am delighted to see the President has renominated you for this position.

Many Members of the Senate have told me they have watched the way you have carried out the responsibilities that the Postal Reform Act has placed upon the Postal Rate Commission. We are grateful to you for the work that you have done and want to thank you.

I have no questions. The record should show I have examined all of the responses that Mrs. Steiger has provided, and the biographical information. She has answered all the questions that have been presented to her, including the financial detail disclosure that has been requested, and we have her own statement. Plus, we have had a substantial staff inquiry into Mrs. Steiger's activities as the Chairman of the Postal Rate Commission, and there are no comments in this file that indicate any opposition to her renomination.

Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. Thank you, Mr. Chairman. By way of observation, I would characterize the period of time that Janet was Chair as a period of growth and maturity in the Postal Rate Commission. Clearly, her leadership has contributed a great deal to that growth. I would also compliment the other members of the Commission on this achievement.

It seems to be a little unusual in Washington these days to have all of the members of a Commission think well of the chair. [Laughter.]

That in and of itself speaks a great deal for Janet's leadership. I certainly appreciate seeing the other Commission members here today. I have sort of indirectly appreciated Janet and Bill since the day that William A. Steiger came across the St. Croix River. I am sure I was the only candidate for the Senate that Bill ever campaigned for. He was too busy doing good in other ways, but he came across the river and drew the biggest crowd that has ever been drawn in Minnesota for a Republican candidate for the Senate. That was in the days when there never were Republican Senators, so nobody bothered to come out and see a Republican candidate for the Senate.

I can't in any way express how much that meant to me. We have mutual friends and my best friend is an old roommate of Bill's. But besides that, it is a wonderful experience for a neighbor to see how the country has benefited from Janet Steiger's many contributions and those which she will continue to make.

I am just grateful for the opportunity to be on the committee with you, Mr. Chairman, which has the opportunity to recommend the approval of Janet's appointment.

Senator STEVENS. Thank you very much. We will look forward to an early reporting of your nomination and will report to the full committee that there are no objections to it.

Mrs. STEIGER. Thank you, sirs.

Senator STEVENS. Thank you very much.

Mrs. STEIGER. Thank you.

Senator STEVENS. Next, Mr. Colvard.

TESTIMONY OF JAMES E. COLVARD, NOMINEE TO BE DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Senator STEVENS. Mr. Colvard, Senator Warner has just sent word that he is on the floor as one of the managers of the Defense authorization bill. He had asked for the privilege of introducing you as one of his constituents and making recommendations to the President, and we will reserve a place in the record at this point for him to place his statement for the record.

[Senator Warner's prepared statement follows:]

PREPARED STATEMENT OF SENATOR WARNER

Mr. Chairman, it is my privilege to present to the committee Dr. James Colvard, President Reagan's nominee to be Deputy Director of the Office of Personnel Management.

I have known Jim since my days as Secretary of the Navy, and welcome him here today along with his wife, Joy, an outstanding schoolteacher in their home residence of King George County, VA.

The Office of Personnel Management stands to gain greatly by Dr. Colvard's confirmation.

With Jim Colvard, you have the voice of 30 years of excellence in government.

Jim began his service in the Navy as an enlisted man during the Korean war.

He later ran the test ranges at the China Lake, CA Naval Weapons Center, the site of the recent field hearings of the Civil Service Subcommittee.

At China Lake, Dr. Colvard made a singular contribution to the Vietnam war effort through the development of the Electronic Warfare Range, providing tactical expertise which dramatically improved survival rates for our carrier-based Naval pilots.

He then went on to become the director of the largest research and development center in the U.S. Navy, the Naval Surface Weapons Center at Dahlgren, VA.

In that key role, his management efforts resulted in multimillions of dollars in annual savings.

Jim also served as the first civilian Deputy Chief of the Naval Material Command and subsequently as Director of Navy Civilian Personnel Policy and Equal Employment Opportunity.

In the course of his career, Jim has been presented with the highest awards for Distinguished Civilian Service by both the Department of the Navy and the Department of Defense.

Perhaps the clearest testimony to Jim Colvard's outstanding record of public service is the fact that he is the first and, at this time in history, the only person to have been accorded the Presidential Rank of Distinguished Executive by two Presidents, Jimmy Carter and Ronald Reagan.

Mr. Chairman, Jim Colvard's honors and achievements speak for themselves.

I am proud to speak on his behalf and urge the committee's most expeditious approval.

His experience and leadership are already contributing important advisory skills at OPM.

He is only awaiting our approval to be officially brought on board.

Senator STEVENS. I have, again, before me the biographical and financial information, the prehearing questions that have been provided to you, and the Office of Government Ethics ethics review, and the contents and results of the staff inquiry into your nomination.

We have examined these and have a few questions to ask. They are a matter of formality.

In one of the prehearing questions, you have responded that the quality and value of Federal work must be recognized and it is very important. But, do you have any means that you are going to pursue to seek to communicate that concept to the Federal employees in your new position?

Mr. COLVARD. Mr. Chairman, first, I think the thing that speaks most eloquently for Federal employees is their own performance, and we seek to establish a simplified system that will allow that performance to be recognized.

Additionally, Director Horner has spoken most forcefully since she became Director of OPM about the need for recognizing the value of the contribution of Federal employees. I intend to continue that. We intend to meet with employees themselves in terms of seeking ways to improve their development, giving them opportunities, but, as I said, primarily to let their own performance speak for itself.

Senator STEVENS. As I have reviewed these suggestions that have come from OPM concerning changes in the pay concepts of the Federal Government, they all involve the process of evaluation of performance. And yet if there is any one area that has been criti-

cized as far as the Federal Government's efforts in the past, it is the ability of supervisors to properly evaluate performance and to follow the intent of Congress in that evaluation.

I am reminded of the SES legislation that said that there could be payments made for extraordinary performance in the SES area.

We discovered that the SES people had just gotten together and decided, "This year, I will rate you high; next year you rate me high, and we will both get awards,"—a complete breakdown of the evaluation process because of the feeling that there ought to be a more fair distribution of the way the evaluation of performance works, which is a human thing to do.

Don't you believe that we have to have some better means to evaluate performance before we can go into the areas that OPM has indicated we should go?

Mr. COLVARD. I think we have pretty well demonstrated for a couple of centuries in this country that performance can be evaluated. We do that successfully in the private sector. I think we have demonstrated with the experiment at China Lake and San Diego that you can do that quite successfully with the public sector. When you clarify the relationship between the employer and the employee and make the understanding of expectations and requirements clear and attach to that some effect of impacting pay, I believe that dialog can be carried out.

It has been my experience, primarily within the Navy, that, in fact, we did not vote to pass the honors around. We did try to determine, and were able to do so, the relative capability of the individuals.

Senator STEVENS. Do you have family here, Mr. Colvard?

Mr. COLVARD. Yes, Mr. Chairman. My wife Joy is with me today.

Senator STEVENS. Nice to have you with us.

I am going to yield, first to Senator Durenberger, and then to Senator Eagleton. I am going to go vote. There is a vote on, and perhaps by the time Senator Durenberger is ready to leave and Senator Eagleton has begun his questions, I will be back so we will not have to interrupt this hearing.

Mr. DURENBERGER [presiding]. Thank you very much, Mr. Chairman.

Mr. Colvard, you spent a lot of your career in the Naval Weapons Center at China Lake, and you know the administration has proposed a comprehensive reform of civil service based on China Lake and similar experience at the Naval Ocean Systems Center at San Diego.

Also, the current DOD reauthorization bill sets up a special pay system for DOD scientific and technical personnel based on China Lake. My question is this: Do you think we are really ready to expand the China Lake experiment to the rest of the Federal work force?

What changes do you think, from your experience, need to be made to make sure that it works when it is expanded? Should Congress endorse piecemeal changes like the one that is included in the DOD authorization bill, or is it really important that the entire civil service be covered under a unified pay system?

Mr. COLVARD. Senator, I think that we have learned through 6 years' experimentation some very fundamental things. The alterna-

tive system does work better than the current system. I think we are ready to extend it in a very rational fashion to the rest of the work force. We have proposed under the Civil Service Simplification Act that we take the system that we have experimented with, essentially unchanged. Otherwise you would be extending something that you have not experimented with; therefore, you wouldn't know the cause-and-effect relationship.

We have suggested that as agencies voluntarily come in and demonstrate that they are ready to convert, that we make the determination which agencies are ready to convert from the current General Schedule to the alternative system.

We do not believe you can do this in a piecemeal fashion with a portion of the work force. We strongly oppose the idea of making piecemeal changes as are proposed in the Defense authorization bill. We believe that that leads to further fragmentation in the work force. It creates two systems side-by-side, in the work place. We believe that becomes almost impossible to administer.

We are not proposing to throw out the current General Schedule and instantaneously convert to the new system. We would continue the very reasoned and rational approach that we have taken: Of experimenting, of measuring, of determining what we know, and then expanding that to include new environments to determine if there are additional factors other than the character of the system itself that would impact its effectiveness.

If we discover any such characteristics, we would change the new system at the time we documented them, but we would not essentially change the current system. We would extend the new system to other agencies only as they are ready, and we are strongly opposed to any piecemeal extension of it.

Senator DURENBERGER. OK. I am referring now to a prehearing question and response. Responding to a question about the Senior Executive Service, you suggested that the definition of the senior executive is too broad. I wonder if you would expand on that and describe what needs to be done to fix the Service?

Mr. COLVARD. When the Senior Executive Service was created in 1978 by the Civil Service Reform Act, we converted everyone into the Senior Executive Service who was in the scientific, technical, or Public Law 313, and essentially all of the old super grades. We did that without concern whether or not they were, in fact, managers or executives or whether they were practitioners of great expertise rather than managers—albeit they were deserving of the recognition that they had been accorded.

There were people who were assigned as an engineer, for example, or senior personnelist, senior accountant, senior lawyer; people whose contributions to the country was their specialized expertise rather than their general management skill.

In that sense, I think we have in the SES a heterogeneous work force that we are trying to treat in a homogeneous fashion in terms of the way we develop them, we regard them, and deal with them. We have asked the agencies recently to tell us whether or not they have large numbers of specialist positions that they would like to treat in a different fashion from the rest of the executives.

I think we need to establish the understanding from the point of view of the agency, not ours, of what the breakout should be, and

we should treat those people who are specialists differently in the sense that we do not subject them to the mobility provision or the requirement to go through the management qualification course to determine the executive's skills.

For example, our Nobel Prize winner at the Naval Research Laboratory should not be in the general executive category. His value to the country is his professional expertise. That is what I meant by it being too broad, sir.

Senator DURENBERGER. Thank you. In order to accomplish that end, would we be required to legislate a solution such as the one you have recommended?

Mr. COLVARD. I am not certain that legislation would be required. If it were required, it would be quite minor. For example, right now, the number of political appointees is a function of the number of career Senior Executive Service members. It could be 10 percent of that. If you left these people in the Senior Executive Service, but remove them from the mobility provisions and the Qualifications Review Board, I'm not certain that it would change anything legally. I would have to consult with a lawyer on that.

I'm not certain legislative changes would be required. If you did, it would be very, very minor. There would be no need to change the intent of the law. It would simply be the provisions under which certain things have to occur. We are required now to subject those people to going through the Qualifications Review Board.

Senator DURENBERGER. I find the delegation of classification authority, the line supervisors in the Navy to be kind of interesting. But also I have some concerns. A recent analysis by OPM indicates that there is a significant overgrading in the Federal service, and much of this overgrading is attributed to what is called management pressure.

By the Navy's actions, aren't we letting the fox into the chicken coop? How does this square with the law which requires consistency?

Mr. COLVARD. Well, I think the delegation of authority to line managers is appropriate in the sense that it makes the person who is responsible for work execution responsible for determination of status and ultimately, determination of pay.

The Navy will now be in the position where the person who is responsible will be the one who is judged guilty of the mistake, if they make a mistake, as opposed to their adviser; namely, the classifier. I find problems with the delegation at this time until you simplify the system so that it is understandable by the untrained mind or persons not trained as a specialist in the area of classification, for example. I think it will be more difficult to exercise.

I am not concerned that people will abuse it. I think our experience has shown very clearly that the Federal managers are very responsible and very competent and very capable of exercising that authority as they did with the experiments in the two Navy laboratories.

But I believe for it to be meaningfully handled, it has to be simplified.

Senator DURENBERGER. The Chair of the subcommittee is in agreement that the classification system needs fixing and that setting additional standards won't provide the fix. Is there a way that

you can assure this committee that an overhaul of our entire classification system will be given a high enough priority to see results during your tenure?

Mr COLVARD. The No. 1 priority of Director Horner and, certainly, my No. 1 priority is the Civil Service Simplification Act. The heart of that proposal is simplification of the process. So I assure you we will give it our full attention.

Senator DURENBERGER. No. 1 priority, full attention?

Mr. COLVARD. Yes, sir.

Senator DURENBERGER. There is a difference. Much is being said and written about pay reform. The chair of the subcommittee is of the opinion that any reform should be quite comprehensive and applied across the entire Federal service. To reach the end, he is of the opinion that additional demonstration projects are needed.

One possibility that interests him is the use of locality pay for nonmobile grades. Are there any such proposals pending, and would you support such a project?

Mr. COLVARD. OPM has vigorously supported, since 1978, when the provisions were enacted into law for experimentation, ideas that agencies have proposed for examining better ways to manage within the Federal sector.

It is my personal opinion and experience that these new ideas work best when they are proposed by the agencies that are going to experiment with them rather than by OPM or by Congress. We have no philosophical objection to the ideas that have been proposed by many people, including Congresswoman Oakar and others.

But the law currently permits that. We would welcome ideas. When agencies come forward, we will consider them. We do not currently have a proposal for locality pay to my knowledge, sir.

Senator DURENBERGER. Hopefully, the Chair will return quickly to ask questions, but I have to leave to catch a vote. We will recess until he returns.

[Short recess.]

Senator EAGLETON [presiding]. The committee will once again be in order.

Mr. Colvard, the first question I have is in the area of early out. As you know, the committee is scheduled to consider an early out retirement proposal next week. When hearings were held a short time ago, Director Horner expressed reservations about the wisdom of the plan. I am sure you are aware of the provisions of the modified proposal.

You told the committee staff in an interview last week that you do not favor enactment of the proposal at this time. I think you said that you would "keep your powder dry." Is that still your position?

Mr. COLVARD. Yes, Senator, it is. I think that I should elaborate a bit. The proposal for early out has some attractive features if we are faced with large reductions and have to have a very humanitarian way of dealing with the impact on the people.

It has some very negative offsets, which is what led Director Horner to have some reservations, and that is, with the provisions of a long-term freeze, I am not sure we could stand the brain drain of talent without replacement.

My comment to your staff saying I would keep my powder dry would be to determine the magnitude of the impact we would be faced with, and if it appeared we needed to protect our employees, that we then enact it. But prior to that time, I would not, because we couldn't stand the great losses in many of our agencies that we would incur if we did that.

Senator EAGLETON. Elaborate on the phrase you used, "to determine the magnitude of the impact we would be faced with".

Mr. COLVARD. I think there is a great deal of uncertainty in Washington these days about exactly the impact of Gramm-Rudman, for example. If you have sequestration, then you have cuts in agencies, or if we don't, that is what I meant by saying let's determine the magnitude before we move.

Senator EAGLETON. Even if we could hypothesize certain scenarios of magnitude in terms of billions of dollars or numbers of people or both, are you satisfied with the structure and the substantive provisions of the modified proposal?

Mr. COLVARD. The modified proposal is not significantly different from the existing law in terms of provisions for early out. It does add a few people in a couple of categories. Personally, I wouldn't expand the categories, because I believe the current law is reasonable.

I would rather trigger the enactment of it on the basis of a need for it in an agency. And I would have no objection personally to the expansion, because it is relatively minor. It would, in a sense, give people an entitlement that we have not given to other people, so I would have some concern whether or not we were allowing people an early out provision that other employees who put in 20 or 25 years did not get. I think we have to take a very balanced approach to dealing with our people. So that would be my only concern.

Senator EAGLETON. Then as far as you are concerned, and based on your experience, you think the present law already on the books is adequate to deal with early out and there is no imperative or overwhelmingly compelling reason to tinker with it at this time?

Mr. COLVARD. That's my opinion, sir.

Senator EAGLETON. In written responses to the committee's prehearing questions, you said that as Deputy Director, you will assist the Director in formulating policies and seeing that they are executed successfully. You have had a distinguished executive career, and also as a science administrator. You will be a role model for all other career employees throughout the Government with regard to their obligation to not only carry out the letter of the law, but also to observe the spirit of the law.

Therefore, I ask you, are you unequivocally committed to both the letter and the spirit of the merit principles in the Civil Service Reform Act?

Mr. COLVARD. Yes, Senator, I am.

Senator EAGLETON. The first merit principle states:

> Selection and advancement should be determined solely on the basis of relative ability, knowledge and skills after fair and open competition, which assures that all secure equal opportunity.

Do you agree that this principle makes clear that open competitive examinations are the foundation for a civil service system based on merit?

Mr. COLVARD. It makes clear that the criteria that you use to determine relative merit must be free of subjective judgment, that is based on anything other than the qualifications of the individual. The vehicles by which you do that have been subject to much practical and intellectual argument over the years.

I do not agree on the vehicle because there is no universal agreement within the theoretical or practical society. In terms of the basis of operating strictly on the qualifications of the individual to do the job as determined by whatever tools of measurement are appropriate, I wholeheartedly support that.

Senator EAGLETON. I heard your answer. I am not sure of it. Were you taking issue in any sense with the premise of my question?

Mr. COLVARD. No, Senator. I am taking no liberty with your question. I do not have any disagreement with the idea of your principle. I am saying that it is extremely difficult to reach universal agreement on what the tools of measurement are. For example, we have had the PACE exam, which is suspended under the decree, as you are well aware. That was an examination about which there was great contention as to whether or not it had "generalizability" and was universally a good measure of merit.

Senator EAGLETON. That specific exam?

Mr. COLVARD. Yes, sir; that specific exam.

Senator EAGLETON. But what about the concept, generic concept, of holding a competitive exam?

Mr. COLVARD. The generic concept I wholeheartedly agree with, Senator.

Senator EAGLETON. Would you agree that without adequate public information about job openings in Federal agencies the requirement for "open competition," which is in the best tradition of the free enterprise system, is undermined, that is, unless there is adequate public information about job openings?

Mr. COLVARD. Yes; I agree. If you don't know the availability of jobs, it is hard to compete for them.

Senator EAGLETON. Are you satisfied at the present time that there is adequate public information about job openings?

Mr. COLVARD. No, I'm not, and we have been looking at that. Director Horner has asked us to look at so-called self-help programs in terms of job centers. We have experimented with one in Philadelphia. It has been very successful. We, like other agencies, are faced with cutbacks in the number of personnel and the number of dollars available to us, and we are trying to find less costly alternatives to making available to the public that information.

There have been cutbacks in the last several years in terms of job center availability to potential employees. We do not have the people assets to reestablish the system as it was 10 years ago. But we are looking at high technology or less labor-intensive ways of doing that, and we have that as a priority that we are working on today.

Senator EAGLETON. I would urge you to continue to make that a priority matter. Seldom does a day go by in our St. Louis and

Kansas City offices when we do not get an inquiry from some person about a job opening and an expression of, "I didn't know about the opening" or "I didn't know about the process" or et cetera.

There is a great sense of mystery amongst many people as to job availability, job opening and the process. Now, I know somehow or other, even with the best of informational services, you can't reach all 238 million American citizens, the people in this country. But I hope that you will continue to emphasize that as a priority matter, because it is—we are aware of it in the context that I have just mentioned.

Mr. COLVARD. I assure you, Senator, we are aware of it also and are working on it.

Senator EAGLETON. Would you agree that OPM is responsible for seeing to it that valid examinations are developed and used so that agencies can fill their jobs from amongst the most likely to perform best?

Mr. COLVARD. Yes. That is our responsibility, and within the past 5 years, we have developed tests, related to job performance, for about 75 percent of the hiring activity in the PACE category of jobs we had to suspend testing under the consent decree. We are continuing to pursue that issue.

Senator EAGLETON. Recent OPM data shows that only one of every four appointments of full-time jobs made by agencies of persons not already in the Federal job results from open competition. That low ratio undermines citizen confidence in the competence and impartiality of civil service workers. It also denies qualified citizens the opportunity to compete for Federal jobs. Can we assume that your commitment to the letter and the spirit of the merit principles which we discussed before means that you will focus on improving that situation?

Mr. COLVARD. It does, sir.

Senator EAGLETON. Can you elaborate on how you think it could be improved? What means and mechanisms you would utilize to improve it?

Mr. COLVARD. Well, in addition to continuing the development of examinations that have relationship to the job for which you are being tested, we are looking at other vehicles that perhaps would have generalizability across the various series.

We are also well aware that the fact that the person is not given a written test does not mean they were not objectively selected.

With respect to the one in four that you talk about, the other three out of four are comprised of people who were selected under competitive evaluations by people who evaluated their performance records. It is not merely a subjective judgment on the basis of who happened to be available. Indeed, it involves upward mobility programs and a lot of other outreach programs, including college campus recruitment, where a determination is made on the basis of compilation of a performance history.

So I wouldn't want to leave the impression or have the impression left that these are nonqualified people, that some are only getting selected on a basis other than merit.

We would like to have universally accepted and sharp examining tools about which there is no question that we could use to deter-

mine future potential. My opening comment, perhaps wasn't as clear as it should have been, suggested that those tools are not universally recognized to exist today. We will continue to search for them.

Senator EAGLETON. In your written response to some prehearing questions, you said that OPM has tried various approaches to evaluate compliance with merit principles, but none have proven entirely successful. You say that OPM's recent reorganization should help the agency do a better job.

Frankly, that is not encouraging in view of the findings and conclusions of the most recent annual report of the Merit Systems Protection Board on OPM. That report, dated May 1986, raises some serious questions on OPM's upholding of the merit principles and ensuring compliance thereto.

The report says that because of changes in OPM's evaluation program made 2 years ago, violations of civil service requirements and their causes are not being identified. The report concludes that a return to thorough inspections at the locations where personnel decisions are made is—this is from that report—"critical for OPM to meet its statutory obligations."

Therefore, I ask: What actions do you plan to take on this recommendation and others that have been made by the Merit Systems Protection Board to restore confidence in the integrity of the merit system?

Mr. COLVARD. The report you refer to, Senator, goes on to say that one of the things that we should do is release the onsite studies that we did in looking at the aggregate data in overall performance of an activity. These onsite visits were in lieu of the individual classification studies that had been done in the past, which were discussed as the indepth evaluations.

Since that report, we have taken seriously their findings, although what we were looking at was a draft report. We have issued those reports to the agencies. We have discussed them with the agencies. We have presented them to the Domestic Policy Council. We are also evaluating the effectiveness of that approach.

What we have been trying to do there, Senator, is see if there is a way to determine the net effect of personnel actions as opposed to the individual correctness of a personnel action. It is, in fact, the execution of work that you are ultimately interested in, and the management of the work force, and we have been trying to see if there are parameters other than just the classification correctness so that we could give managers in agencies and even Cabinet level officers some feedback as to how their agency is doing overall.

In fact, this has been very well received at the Cabinet level. We intend to continue the search for better ways to measure the meaningful parameters that have relationship to work accomplishment. We are not convinced that the approach that was taken a couple of years ago is, in fact, wrong. We are of the opinion that we have not pursued it to its end. If we continue the pursuit and we find that, in fact, it does not work, we would consider alternatives, including classification reviews, which we did in the past.

Senator EAGLETON. It has been noted that onsite inspections made by OPM are sometimes so brief, 1 or 2 days, that the client's work is largely nonexistent or, at best, superficial. Onsite inspec-

tions in years past used to be 1 to 2 weeks. Can you comment on that?

Mr. COLVARD. We have reduced the number of onsite visits. There have been some instances in which the data was taken by phone, even. We do not necessarily agree with that. We have been trying to adjust within our resource constraints to find an approach that we could afford to do and yet was effective in its pursuit. I do not believe that the detailed classification reviews that we did in the past are necessarily a better way to do it. They are extremely labor-intensive, and what they told you was that an individual action was wrong. They did not tell you whether or not your overall work force was being well managed.

I think there is a rational position somewhere in between the excruciating audit of classification actions and perhaps the sometimes too cursory looks that we have taken with the recent onsite visits, and we will search for that balance.

Senator EAGLETON. Mr. Colvard, we have another half a dozen other questions, maybe less. I am going to have them Xeroxed at the present time, and could you give us written answers thereto? The ones that are circled I have asked. The ones that are uncircled, could you give us written answers? Could you do it in a timely way because we are going to meet on this next Tuesday. Today is Wednesday. Could you get them back to us by Friday? They are quite a treatise.

Mr. COLVARD. Yes, sir.

Senator EAGLETON. A gentleman with your experience, I think you can write them off the top of your head. Thank you.

We have some additional questions that will be given to you.[1] We would like those back, as well, by Friday, too.

Are there any other questions for Mr. Colvard?

[No response.]

Senator EAGLETON. Fine. Thank you, Mr. Colvard. We appreciate your appearance here today.

Mr. COLVARD. Thank you.

Senator EAGLETON. That concludes the hearing on Mr. Colvard.

[Prepared statement of Mr. Colvard follows:]

PREPARED STATEMENT OF JAMES E. COLVARD

Mr. Chairman and members of the committee, I am very honored to appear before the committee this afternoon as the President's nominee for Deputy Director of the Office of Personnel Management.

Being nominated by the President for an important post in the Government is obviously a high point in anyone's life, and as a longtime career civil servant, I am particularly gratified that I am being nominated to assist Constance Horner, the Director of OPM, in managing the Federal work force.

I believe that my nearly 30 years of Government experience have given me an understanding of the rewards and the frustrations of working for the Government, and I hope that I can bring this experience to bear as Deputy Director of OPM. In many ways, a personnel system that was designed to protect employees has come over the years to throw unnecessary paperwork obstacles in the paths of Federal managers and employees. I intend to devote myself as Deputy Director of OPM to helping Director Horner correct this situation, and work toward a personnel system that better serves Federal managers, Federal employees, and most of all, the American people.

I would be pleased to answer any questions the committee may have.

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[1] See p. 64.

Senator EAGLETON. Now we will move to our final nominee, Mary Wieseman, to be Special Counsel of the Merit Systems Protection Board.

TESTIMONY OF MARY F. WIESEMAN, NOMINEE TO BE SPECIAL COUNSEL, MERIT SYSTEMS PROTECTION BOARD

Senator EAGLETON. Ms. Wieseman, we are delighted to have you here. Am I correct you have your family with you?

Mrs. WIESEMAN. Yes, I do, Senator.

Senator EAGLETON. Why don't you introduce your family? We would be delighted to meet them.

Mrs. WIESEMAN. These are my sons Joe and Teddy, my husband, Ted, and I have a daughter who is at the beach.

Senator EAGLETON. She is at the beach. She is your smart child. [Laughter.]

No; they are all fine children. I have been watching this young blond-haired fellow. He fell asleep during my questioning. That is exactly the time you fall asleep, when Eagleton starts talking. [Laughter.] You know what you are doing. [Laughter.]

All right, Mrs. Wieseman, do you have a statement or comments you would like to make at the outset?

Mrs. WIESEMAN. Just brief opening remarks, Senator.

It is a privilege to appear before the committee today as the President's nominee to be Special Counsel to the Merit Systems Protection Board. I have been the Inspector General of the Small Business Administration for the past 3 years, and I found that position to be rewarding and challenging.

I believe our efforts in the Inspector General's Office of SBA have shown tangible results for the Small Business Administration. I am deeply grateful to the President for selecting me for the nomination to be Special Counsel, a position which I view as even more challenging than my present one.

I believe I have the experience as a practicing lawyer for almost 20 years to fulfill the responsibilities of the Office. I have been a lawyer for the Government, the Justice Department, the U.S. attorney's office and other Government agencies, as well as an attorney in private practice.

I believe my experience as the Inspector General of the Small Business Administration has also given me the management experience to assist me in fulfilling the responsibilities of the position to which I have been nominated.

I believe the Office of Special Counsel has a very demanding role to play. The role of the Office is still evolving. I am aware of the controversy which has at times surrounded the Office and the concern expressed about its ability to fulfill the mission established for it.

At this time, I have no hard and fast priorities for the Office. I intend to review and evaluate all aspects of the operation and make adjustments as necessary. You can be assured that my major goal will be to assure the even-handed professional enforcement of law. If legislative changes are needed to assure that the purposes of the Office can be accomplished, I would not hesitate to recommend them.

I intend to be open to discussions with all who have an interest in the efficient, effective operation of the Office. I consider it a great honor to be nominated to serve in this important position and intend to use all the resources which I have to fulfill the responsibilities of the Office.

Senator EAGLETON. Thank you very much, Mrs. Wieseman. I am delighted to have Senator Levin with us. Do you want to ask questions? Go ahead.

Senator LEVIN. No, no.

Senator EAGLETON. I yield to you.

Senator LEVIN. Mr. Chairman, it is so infrequent that you are in the chair that I think I would not want to start off.

Senator EAGLETON. Thank you. I have a few questions Senator Stevens would have liked to have asked. Senator Stevens went over to vote, and then they told him that his amendment would be the next amendment taken up, so that is why he has been unable to return. I will pursue some questions on his behalf, and then I will yield to Senator Levin.

Why don't you get yours out of the way? Go ahead.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. All right. Thank you, Mr. Chairman.

First, let me congratulate you on your appointment, Mrs. Wieseman. The major concern that I want to talk to you about today is the problem whistleblowers have been having in the way they have been treated by the OSC and the Protection Board itself, and whether or not the Board should have jurisdiction to hear all whistleblower appeals directly.

There is a recent study which shows that there has been a real decline in the confidence level of Federal employees, in terms of their confidence that they will not be the subject of retaliation if they blow the whistle. In 1980, the Merit Systems Protection Board reported that 20 percent of employees gave fear of reprisal as the reason for not having reported fraud or abuse. That rose spectacularly for 3 years, so that by 1983, the Board reported that 37 percent of employees gave fear of reprisal as their reason for not reporting fraud or abuse. That is almost twice as many employees in just 3 years. That increase is of obvious concern to us in the Congress, and I would hope it would be of concern to you in the OSC.

I haven't seen much concern out of the OSC in that regard, I must tell you. We are very worried about that absence of concern as whether we will protect people who blow the whistle. That lack of concern is also reflected in the following interview with the former Special Counsel, Mr. O'Connor, that was reported in the Washington Post.

He was asked what his advice to whistleblowers would be and his answer was, "Don't put your head up, because it will get blown off." That is terrific advice to people who want to put their head up; we want them to come forward and yet we have the Special Counsel reportedly stating that they should not put their head up, because it will get blown off.

PREPARED STATEMENT OF SENATOR LEVIN

Mr. Chairman, I am pleased we are conducting this hearing on a new nominee for Special Counsel. I am pleased because it is critical that we get someone new at the OSC, someone who will bring a fresh, aggressive approach to the job of helping and protecting federal employees.

At $5 million, the Office of Special Counsel is one of the Government's smallest and most modestly funded agencies. Yet it can have an impact far disproportionate to its size. The OSC can play a critical role in helping our Government save tens of millions of dollars if it encourages and protects those Federal employees who report waste and abuse. But to have any effect at all, the Special Counsel must have the confidence of employees. Employees, particularly whistleblowers, must be sure that if they go to the OSC, they will get a fair shake, that the OSC will not automatically reject their case or take management's side, I believe such employee confidence in the OSC has been sadly lacking over the last few years. That is the reason I introduced legislation earlier this year which is intended to give whistleblowers a fighting chance. If we want to pay more than lip service to the idea of a streamlined Government free from waste and abuse, we must be willing to protect whistleblowers.

I am hopeful that the nominee before us can make a significant contribution toward such efforts, that she will work to establish the OSC as an effective and responsive office. I am certainly willing to work with her to accomplish that goal.

Senator LEVIN. What I would like to know is whether you are going to take action, administratively or by support of a bill which we have introduced on a bipartisan basis, to make sure that we encourage whistleblowers, to make sure that whistleblowers are treated fairly and impartially in the OSC?

Mrs. WIESEMAN. Yes, Senator, I certainly am committed to the role of the Special Counsel in connection with supplying a secure channel through which personnel in the Federal Government can expose fraud, waste and abuse. I believe in connection with the statement that you read from the former Special Counsel that one of the explanations for that kind of statement was that if a statement is made confidentially to the Office of Special Counsel, that no one need know who made the confidential statement so that reprisal would not then be possible.

That is, I think he was attempting to encourage—although that statement is certainly fairly provocative in the way it is reported to have been said—employees to come forward in the secure confidential channel which is available.

Now, it is absolutely clear that if one makes a privileged communication and a reprisal is taken against him, it is the duty of the Office of Special Counsel, under the legislation, to evaluate those issues, to evaluate those allegations, to investigate, where necessary, and to take action, and I certainly intend to do that.

Senator LEVIN. Do you believe, as a general rule, that the OSC should communicate sufficiently with each complainant to assure that the OSC and the complainant have a consensus, an understanding of the relevant issues in the employee's allegations?

Mrs. WIESEMAN. I certainly agree, Senator, that the Office of Special Counsel must know what the allegations are; must review those allegations with the person who comes forward and assure that there is no misunderstanding of what those allegations are. The only caveat I would have in connection with that question is the consensus with respect to the allegation.

I think when one is receiving information in any type of investigation or evaluating it, the agency or the office conducting the evaluation, may or may not have other information concerning the

allegation. So that would be the only caveat. Certainly, in the main, I would agree with that statement.

Senator LEVIN. But in terms of communication, in order to try to achieve an understanding, at least, you would support that kind of communication with the complainant? I am talking now about the communication, not necessarily the——

Mrs. WIESEMAN. Yes, Senator. I think in any situation like this, it is certainly better for evaluation purposes to have communication in writing and back-up support, et cetera, as well as a personal communication, in some manner.

Senator LEVIN. Would you agree that after learning of the agency's defense to reprisal allegations that the OSC should review that defense with the complainant in order to obtain his or her rebuttal?

Mrs. WIESEMAN. Senator, I think it depends on what the allegation is and what the rebuttal is. By and large, I would say yes. If it is a question that is—and I am trying to think of an instance where it is a clear-cut response from the agency with no factual dispute—if there is any factual dispute, certainly, I think the complainant should be given the opportunity to know what the agency's position is.

I think there may be instances where there is a question of law that does not have any factual dispute involved with it. And so I would say by and large, yes. I could envision or think of the possibility or instances where that might not be absolutely necessary. But by and large, yes.

Senator LEVIN. Even in a question of law, the complainant might have a lawyer that would like to be heard on that issue, too.

Mrs. WIESEMAN. That is true. And I don't have any problem with the general proposition.

Senator LEVIN. As I indicated, a number of us have filed a bill on a bipartisan basis. Many members of this committee have joined in this effort, to try to enhance the protection of whistleblowers through Senate bill 2014. Are you familiar with the details of that bill?

Mrs. WIESEMAN. Yes, Senator.

Senator LEVIN. Could you submit for the record a reaction to and comments on that bill? [1]

Mrs. WIESEMAN. For the record?

Senator LEVIN. Yes.

Mrs. WIESEMAN. Yes; I will.

Senator LEVIN. Thank you very much, Mr. Chairman.

Senator EAGLETON. I repeat, we will be voting on this nomination next Tuesday, so I would suggest, Mrs. Wieseman, that if you could get it to us by Friday so that we have a chance to look at it, it would be very helpful. I know that only gives you 1 full day to work on it, but if it is possible, it would be most useful.

Mrs. WIESEMAN. I will have it in by Friday.

Senator LEVIN. Let me again congratulate you and your family for being with you.

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[1] See response to question 7 on p. 80.

Senator STEVENS. I am sorry to have been late. I had an amendment to offer to the pending bill. I had to do it. I appreciate my two colleagues conducting the hearing.

Let me ask, was your family introduced? Was your husband introduced?

Mrs. WIESEMAN. Yes.

Senator STEVENS. It is very good that you have the support of your husband. One of the growing problems we have now is the question of substance abuse, drug abuse, whatever it might be, the substances we are trying to limit and curtail. There is certainly going to be a battle now as far as the President's recent statements. What role do you think the OSC should take in the area of drug abuse testing and prevention as far as the Federal work force is concerned.

Mrs. WIESEMAN. Well, I think it, in terms of support for the President's program, there is no question that I think every Government agency owes that support, and it is necessary to get behind that program which is so essential to the work force, the Government work force generally.

Specifically, with respect to the Office of Special Counsel, I hadn't thought of that in those terms prior to this time. I could see some possibility if there were testing, there might be some allegations of prohibited personnel practices in connection with testing requirements, perhaps regulations at OPM could place a requirement on the Special Counsel to make comments on regulations in that area where they violate the merit system.

I can't think of anything specific, Senator, because of the nature of the office, that is, the prosecution function, investigation and prosecution function. Except, now that I am thinking of it, there is case law which permits the Special Counsel to bring standard of conduct violation cases before the Merit Systems Protection Board.

That possibly could have some bearing if there were drug abuse involved. In that area, standard of conduct violations, there may be instances where the Special Counsel's Office could be involved.

Senator STEVENS. I am of the opinion myself that there are an increasing number of areas where the use of drugs by an employee can well endanger the life and health of other employees. I saw an example just last evening, as a matter of fact, of that, and it is going to stick in my mind for a long time.

I do believe that all of the areas of government that have the power to attempt to bring charges against those who are using drugs and doing it particulary when on duty should pursue it. So I urge you to see the role you can pursue in your new position.

What do you think about these frivolous cases? We have been hearing a lot about frivolous cases. Would you consider examining the whole area and giving us a recommendation as to what to do? Some people have suggested that maybe we should empower the imposition of user fees or some kind of fees for those who bring frivolous cases and take the time of agencies such as yours.

Mrs. WIESEMAN. Well, Senator, I wouldn't want to put a barrier between an employee and the Office of Special Counsel in connection with bringing allegations to the attention of the Office. I'm sure, in any office, any prosecution office, many frivolous complaints come forward.

I think it is the responsibility of the Office to set up a management system and a review system that can handle the allegations that are recovered.

If it came to the point where it was impossible to perform the evaluation function, given the volume, I might have a different recommendation. I don't think that is the case currently, and as I say, I would not want to put a barrier between the employee and the Office of Special Counsel.

Senator STEVENS. I am told that there has been an increasing number of settlements without litigation through the OSC process. Do you favor that?

Mrs. WIESEMAN. I think any time, Senator, that a case can be settled fairly and equitably, I think that is to the benefit of all involved, by and large. That is true in any litigation, and as a litigating agency, the Office of Special Counsel has to determine what are the prospects of prevailing in litigation, and weigh the prospects of prevailing in litigation as opposed to the settlement of a case.

As I say, as a general matter, I would think that I would certainly take a position that being able to reach compromise an agreement and corrective action without litigation would be something which should be attempted.

If that's not possible, if corrective action or corrective action in a fair and equitable manner is not possible, then litigation or prosecution before the Merit Systems Protection Board is available. But I think settlement of claims is something that should be favored.

Senator STEVENS. Have you ever written any papers or made any decisions or taken any firm position on the Hatch Act?

Mrs. WIESEMAN. No, I haven't Senator.

Senator STEVENS. From every indication, you will soon be doing so. This inquiry seems to be increasing in our offices. I assume you will get the same inquiry. Many people are raising questions of what really constitutes a violation of the Hatch Act under these modern conditions of personal involvement, particularly in single issue areas that do get involved in the political spectrum.

I have examined the biographical and financial information that you have provided and looked at the answers you provided to the prehearing questions.

I have examined the review of the Office of the U.S. Government Ethics of your financial disclosure. There is also a letter from the Office of the Special Counsel relating to the review of the responses that you have provided with regard to conflict of interest. In addition is the confidential memorandum prepared by the staff as a result of the staff inquiry regarding your nomination, all of which are in order, and the record should so disclose.

Do you have any further questions for the witness?

Senator EAGLETON. I have a couple, Mr. Chairman. Thank you.

I was just reading through your bio, Mrs. Wieseman. I noticed you were with Wieseman & Wieseman, your husband, I take it, from 1975 through 1983.

Mrs. WIESEMAN. That's right.

Senator EAGLETON. But during that period, you also served a year with Legal Services Corporation.

Mrs. WIESEMAN. That's right, Senator.

Senator EAGLETON. How were you with a private firm and with Legal Services Corporation simultaneously?

Mrs. WIESEMAN. I was hired as a consultant with Legal Services Corporation and given the position of Acting General Counsel while I was there.

Senator EAGLETON. While you were there, was this the Legal Services Corporation District of Columbia office or is this the main office?

Mrs. WIESEMAN. The main office in the District of Columbia of the Corporation.

Senator EAGLETON. Did you find that work satisfactory?

Mrs. WIESEMAN. It was a period of conflict at the Legal Services Corporation at the time and I did find it a challenging assignment.

Senator EAGLETON. Was there a confirmed board operating at that time?

Mrs. WIESEMAN. No. During the period of time I was there, the board that was nominated was not confirmed.

Senator EAGLETON. Your predecessor to the Special Counsel, Mr. O'Connor—and this is a followup to one of Senator Stevens' question—made it a matter of policy not to file corrective action complaints with MSPB but instead, he sought agreement with the agency involved. Can you comment on that?

Mrs. WIESEMAN. Well, as I mentioned earlier, Senator, I believe that if you can reach an equitable, fair, reasonable compromise without litigation, without prosecution, that that is something to be attempted, and if one cannot reach that, then I think as in any litigation, you look to entering into litigation at that time.

But I think compromise and settlement of any issue, if it's fair and equitable, is something one should try to attain before litigation.

Senator EAGLETON. Another quote from Mr. O'Connor. He said that he would not prosecute a whistleblower reprisal case before the Board unless he had an 80 percent chance of winning. What do you think of Mr. O'Connor's statement?

Mrs. WIESEMAN. Well, I personally, Senator, would not want to try to quantify to that degree, that precision, what percentage of confidence one has in a case.

I think each case must be evaluated on its merits, and you do have to make a judgment: Is this a case that I can prove? Is this a case that is winnable? Or there is no sense to bring a case.

I would not want to put any percentage on it, and I think it would be useles to try to quantify that percentage.

Senator EAGLETON. How do you view the Office of Special Counsel? Is the client the merit system, or do you believe that the Special Counsel should be an advocate of victims of prohibited personnel action?

Mrs. WIESEMAN. In the legal sense, as an attorney-client relationship, I think the Special Counsel certainly is not the attorney and has no attorney-client relationship with the complainant. In terms of advocating in a particular case the position of complainants, once one takes a case, investigates it, evaluates it and eventually, if it does go to litigation, the Office is vouching for that person, for the veracity of that person, for the veracity of that person's position.

I think in that sense, certainly, you are advocating the position. I think one is dealing in semantics in trying to differentiate totally between an advocate for one thing and an advocate for another thing, I don't think that wall can be built as clearly as the testimony would show in the hearings on the whisteblower protection bill, and I don't think it needs to be that clear a distinction, because they are both involved.

Senator EAGLETON. Are you aware of the use of polygraphs by the Special Counsel to test the veracity of whistleblowers? If you are aware of it, would you continue it, and would you use it to test both the whistleblower and the agency manager, or what?

Mrs. WIESEMAN. Senator, I was not aware of the use of polygraphs at the Office of Special Counsel. I have never used a polygraph in any of the legal work that I have been involved in previously.

In thinking about this question, I was reminded by my husband that there was a study from the Department of Justice, I think a couple of years ago, to say that polygraphs are valid only 80 percent of the time. That would give me pause in relying on polygraphs. On the other hand, I know that attorneys in private practice have utilized a polygraph for their own client in criminal cases if the prosecutor will accept the polygraph results in determining whether a prosecution will ensue.

So as a general matter, I haven't used it. I don't have any strong feeling that it should be used. In fact, it would be just the opposite. I would have to be shown that it would be effective. I think in terms of who would be undergoing a polygraph exam, as far as I know, there is is no way to require a witness in a case to undergo a polygraph.

I don't think there is any way to require a complainant to undergo a polygraph, except by virtue of the fact that unless you do, the case will not be pursued, so there is certainly that incentive for the complainant to do that.

But right now, I don't know exactly how it operates. I wouldn't want to say categorically I don't think it is necessary. But as I say, I have never used it, and I don't have a great deal of confidence in polygraphs.

Senator EAGLETON. Thank you very much, Mrs. Wieseman.

Thank you, Mr. Chairman.

Senator STEVENS. We congratulate you on your career to date. It has certainly been an outstanding one for a person of your age, I might say, not that we have any right to guess anyone's age. We look forward to reporting your nomination for early confirmation, thank you very much for your prompt response to our inquiries.

Mrs. WIESEMAN. Thank you, Senator.

Senator STEVENS. The committee will now recess.

[Whereupon, at 3:30 p.m., the committee was recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   Janet Dempsey Steiger
   Mrs. William A. Steiger
   Janet Mary Dempsey (maiden name)

2. Position to which nominated: Chairman, Postal Rate Commission

3. Date of nomination: July 14, 1986

4. Address: (List current place of residence and office addresses.)

   323 Constitution Avenue, Northeast
   Washington, D. C. 20002

   Postal Rate Commission
   1333 H Street, Northwest
   Washington, D. C. 20268-0001

5. Date and place of birth: June 10, 1939
   Oshkosh, Wisconsin

6. Marital status: (Include maiden name of wife or husband's name.)

   Widow - William A. Steiger

7. Names and ages of children: William Raymond Steiger - 16

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

Oshkosh High, Oshkosh, Wis. 9/54-6/57, Diploma, June, 1957
Lawrence College, Appleton, Wis. 9/57-6/61, B.A., June 1961
Reading University, Reading, England 9/61-6/62
University of Wisconsin, Madison, Wis. 9/62-6/63, Teaching Certificate, June, 1963
University of Wisconsin, Oshkosh, Wis. summer, 1963

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

10/80-present Postal Rate Commission
(10/80-3/81 Commissioner & 3/81 to present Chairman)
Suite 300, 1333 H Street, Northwest
Washington, D. C. 20268-0001
Member & Chairman of Regulatory Commission

9/76-10/80 The Workplace
1302 18th Street, N. W., Suite 203
Washington, D. C. 20036
Managerial/Administrative

8/78-11/79 National Academy of Public Administration
1225 Connecticut Avenue, N. W.
Washington, D.C. 20036
Research Associate under contract

Janet D. Steiger

9. (continued)

10/77-4/78 American Bar Association
1800 M Street, Northwest
Washington, D. C. 20036
Writing under contract

7/78-7/78 American Association of Community & Junior Colleges
One Dupont Circle
Washington, D. C. 20036
Consultant

Between January, 1967 and September, 1977 not employed for pay. Served as volunteer in the office of spouse, William A. Steiger, House of Representatives.

approx.
1/66-8/66 Office of the Governor
State of Wisconsin
State Capitol
Madison, Wisconsin
Assistant to Governor's Legislative Aide

approx.
9/64-6/65 University of Wisconsin
Extension Division
Lake Street
Madison, Wisconsin
Editor

approx.
1/64-8/64 Oshkosh School System
intermittent Oshkosh, Wisconsin
Substitute Teacher

1/63-6/63 Fond du Lac School System
Fond du Lac, Wisconsin
Intern Teacher

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

Liaison Member Administrative Conference of the U.S.,1981-Present

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Trustee, Lawrence University, Appleton, Wisconsin

Janet D. Steiger

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Mortar Board
Phi Beta Kappa
Executive Women in Government
Delta Gamma Sorority
Capitol Hill Restoration Society
International Neighbors Club IV
Trustee, Lawrence University

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

For more than 20 years, I have been a member of the Republican Party. In 1980, I was co-chairman of Wisconsin Bush for President. My husband was U. S. Representative of Wisconsin's 6th District from 1967 until his death in 1978. While not an officer of his election committee, I was actively involved with each of his campaigns. For several years I also served as legislative-issues leader of the Republican Congressional Wives. In the past 10 years, I have given many talks, slide programs and formal speeches to a variety of audiences ranging from service clubs to Lincoln day dinners.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

1976-1978

My husband was a regular contributor to Republican candidates for public office, though I have no record of the amounts of those contributions. My own giving began during the primaries for 1980.

1979

Bush for President $100

Janet D. Steiger

13. (c) (continued)

1980	
Petri for Congress	$150
Bush for President	150
1981	
No contribution of $50 or more	
1982	
Chapman for Governor Committee	$ 50
Citizens for Joel Pritchard	100
Citizens for Betty Anne Kane	100
Penwick for Senate Committee	50
Friends of Prescott Bush	100
1983	
National Federation of Republican Women	$ 50
1984	
The Campaign Fund for Republican Women	$200
Elise du Pont '84	50
1985	
The Campaign Fund for Republican Women	$ 50
D. C. Republican Women	50
Fund for America's Future	50
Kasten for Senate	50
National Federation of Republican Women	50
1986	
The Campaign Fund for Republican Women	$ 50
Carrie Francke for Congress	50
Fund for America's Future	50
Lukens for Congress	50
Kasten for Senate	50
Reagan-Bush Anniversary Ball	55

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Outstanding Woman in Government award, 1985 from the Federally Employed Women of Washington
Phi Beta Kappa
Mortar Board
Fulbright Scholarship
Woodrow Wilson Scholarship and various collegiate academic awards

Janet D. Steiger

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Harold Orlans, Nora Jean Levin, Janet D. Steiger, and Joseph C. Colmen, GI Course Approvals, Senate Committee Print No. 16, 96th Congress, 1st Session, October, 1979.

Nora Jean Levin and Janet D. Steiger, To Light One Candle: A Handbook for Organizing, Funding and Maintaining Public Service Activities, American Bar Association, April, 1978.

National Academy of Public Administration, Major Alternatives for Government Policies, Organizational Structures, and Actions In Civilian Nuclear Reactor Emergency Management in the United States, NUREC/CR-1225, January, 1980. (Note: Section IV was the responsibility of Nora Jean Levin and Janet D. Steiger)

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Material attached.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

Although I do not know specifically why the President has chosen me, I believe my nomination as Chairman of the Postal Rate Commission is a result of my five and one-half years of service at the PRC.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My tenure on the Postal Rate Commission as a Commissioner since October, 1980 and as Chairman since March, 1981 has given me expertise in postal rate-making and classification and in-depth knowledge of the postal world.

64-918 O—86——3

A. BIOGRAPHICAL INFORMATION

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

See attached.

SPEECHES OF JANET D. STEIGER

1. May 8, 1986 - Direct Marketing Association's Government Affairs Conference, Washington, D. C.

2. March 21, 1986 - Graphic Communications Association, Clearwater, Florida

3. February 25, 1986 - Chevy Chase Women's Republican Club, Chevy Chase, Maryland - Lincoln Day Luncheon

4. February 17, 1986 - National Association of Postmasters of the United States Officers' Conference, Washington, D. C.

5. January 10, 1986 - Graduates of The Office of Personnel Management Women's Executive Leadership Program, Washington, D. C.

6. November 20, 1985 - Washington Metropolitan Postal Customers' Council, Washington, D. C.

7. November 15, 1985 - Magazine Publishers Association Postal Affairs Conference, Washington, D. C.

8. September 17, 1985 - The Nonprofit Mailers Federation, Washington, D. C.

9. May 22, 1985 - Harvard Seminar, Cambridge, Massachusetts

10. February 19, 1985 - National Association of Postmasters of the United States, Washington, D. C.

11. November 14, 1984 - Long Island Customer Council, Long Island, N. Y.

12. October 29, 1984 - American Gas Association, Washington, D. C.

13. October 2, 1984 - Association of Paid Circulation Publications, New York, N. Y.

14. September 19, 1984 - American Newspaper Publishers Association, Government Affairs Committee, Washington,D.C.

15. February 12, 1984 - Lincoln Day Dinner, Winnebago County Republicans, Oshkosh, Wisconsin

16. November 2, 1983 - Alliance of Third-Class Nonprofit Mailers, Washington, D. C.

17. October 25, 1983 - National Postal Forum East, Philadelphia, PA

18. May 19, 1983 - Mail Advertising Service Association 62nd Annual Conference, Washington, D. C.

19. May 5, 1983 - Direct Marketing Association's Government Affairs Conference, Washington, D. C.

Speeches of Janet D. Steiger

20. April 19, 1983 - National Mail Users Conference's Government Affairs Conference, Washington, D. C.

21. March 11, 1983 - National Newspaper Association's Government Affairs Conference, Washington, D. C.

22. January 18, 1983 - National Association of Postmasters of the United States, Washington, D. C.

23. January 14, 1983 - American Postal Workers Union, AFL-CIO, White Sulphur Springs, West Virginia

24. November 3, 1982 - New Postal Policy Council, Washington, D. C.

25. June 22, 1982 - National Association of Postmasters, Green Bay, Wisconsin

26. May 10, 1982 - Harvard University Program on Information Resources Policy, Cambridge, Massachusetts

27. May 6, 1982 - 1982 DMMA Government Affairs Conference, Washington, D. C.

28. April 27, 1982 - Mail Advertising Service Association Volume Mailers Group, Washington, D. C.

29. March 11, 1982 - The Round Table Lecture Club, Fond du Lac, Wisconsin

30. January 15, 1982 - National Association of Postmasters of the United States, Washington, D. C.

31. October 20, 1981 - National Association of Postmasters, Oklahoma City, Oklahoma

Janet D. Steiger

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Not applicable to present employment.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   I expect to continue as a Trustee of Lawrence University for which I am not compensated. I have no other plans, commitments or agreements.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

Janet D. Steiger

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As a Member and Chairman of the Postal Rate Commission I have been invited to testify on postal policy and legislation on a number of occasions.

Prior to my appointment to the Postal Rate Commission I testified before Congress on Women and Midlife Crisis and on Juvenile Diabetes Research.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I would disassociate myself from any interest deemed to be a conflict.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

Janet D. Steiger

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   Some parties appealing Commission decisions or requesting Commission action in Federal courts name both the Commission and the Commissioners individually. Other than those official duty actions, I have not been a party in any civil court action or administrative agency proceeding.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

   No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None.

PRE-HEARING QUESTIONS FOR JANET STEIGER

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Commissioner of the Postal Rate Commission?

No.

Question 2

Have you made any specific commitments with respect to the basic policies and philosophy which you will follow while a Commissioner of the Postal Rate Commission? If so, please describe these commitments.

No.

Question 3

To your knowledge, did persons representing interests subject to Postal Rate Commission regulation actively support or endorse your appointment? If so, please provide details of those activities.

Several friends wrote letters of recommendation to the President, but this did not occur in any organized fashion. I am sure that many of those most knowledgeable about postal affairs were asked their opinion of my qualifications and performance in the course of the nomination process. I hope the views expressed were generally favorable, but I did not attempt to influence them.

Question 4

Is there any issue currently under consideration by the Postal Rate Commission, or any which may come under consideration, from which you may have to disqualify yourself? Have there been any such issues over the past six years of your service at the Commission? If so, explain.

No.

Question 5

Do you have any interest in any corporation, partnership, association, or other entity which is a significant user of the mails or whose interest may be affected significantly by the levels of postage rates or degrees of postal service?

No.

II. ROLE AND RESPONSIBILITIES OF THE POSITION TO WHICH NOMINATED

Question 1

What do you believe are the most important responsibilities of the position to which you are nominated and what challenges do you expect to face?

Of primary importance is the Commission's responsibility to provide an impartial judicial forum for public examination of proposed rates and services. In fulfilling this role, we are always challenged to recommend decisions that are the fairest possible for all users of the mail and to balance as well as possible often disparate concerns in the interests of the general public.

Another responsibility we take very seriously is that of ascertaining and providing to Congress objective information about our postal system and how it is working -- as, for example, in the recent study of preferred rates and preferred-rate mail usage which Congress directed us to perform.

Question 2

What contributions do you feel that you can make to the Postal Service as a Commissioner of the Postal Rate Commission?

I believe that my years of service at the Commission would add to the Commission's expertise in its deliberations, its efficient handling of cases and its administration. Our function, in turn, is important to the Postal Service as reorganized in 1970.

III. ROLE OF THE POSTAL RATE COMMISSION

Question 1

The Postal Rate Commission is an independent agency. What do you see as the proper relationship between such an agency and the President and the Congress?

The Commission is part of the whole system of checks and balances that has served us well. We, like every other governmental agency, have an ongoing obligation as an information resource for the public and the government. We should strive to be fully responsive to the Executive's requests for information as well as to the Congress as it fulfills its oversight role. However, the Commission must operate with independence and complete impartiality in performing its regulatory function.

Question 2

After six years of service as a Commissioner of the Postal Rate Commission, have your views of the role and responsibilities of the Commission changed?

Not in any essential way. I am more convinced than ever of the value of an impartial public forum, like our Commission, for the examination of proposed postal rate and classification changes, and of a decision based fairly and squarely on the evidentiary record developed there. That is our duty to the Postal Service and the public, and no other action by us should impinge on our carrying it out. It is equally important that these decisions be independent as well as objective and fully explained. In meeting that responsibility, the Commission will serve as part of the vital system of checks and balances.

Question 3

Do you believe that the Postal Rate Commission should be funded directly through congressional appropriation? If so, why? To what extent do you believe the current method of funding impairs the independence of the Postal Rate Commission?

The current method of funding has worked well and has not impaired the independence of the Commission. Moreover, this method places the costs of the Commission upon the users of the Postal Service -- who are also the beneficiaries of postal regulation -- and not the taxpayer.

Question 4

Do you believe that the Postal Rate Commission should have final decisionmaking authority over rates and mail classification matters? What effect would such authority have on the Postal Rate Commission and the Board of Governors of the Postal Service?

Yes. I have often said there are too many bites at this particular apple. I think the Governors should have a role to play after the Commission issues a decision, but I don't think it should be a dispositive one. The Commission's decisions should be final but subject to the Governors' right to return them to us once for reconsideration. Once the Commission has acted on this remand, its decision should be final for judicial review purposes.

I do not criticize the Governors by saying this. It is simply asking too much of a part-time board, no matter how able, to repeat an on-the-record decision making process of the magnitude involved in a postal rate case.

This should not impact greatly on the authority of either body. The Governors would continue their significant role in authorizing requested rates and classification changes and would

have the right to return once for reconsideration. The Commission would continue its role as an expert body to review these requests on a public record with its decisions subject to judicial review.

Question 5

During your term, what has been the relationship of the Postal Rate Commission to the Board of Governors?

The Commission and the Board of Governors have distinct statutory functions. Within those boundaries, we have kept the lines of communication open. There have, of course, been differences of opinion on certain major issues. However, our capacity to communicate with the Governors has not infringed upon the ability of the Commission to independently examine the matters before it and to render its opinions and decisions based solely upon the public record compiled through the administrative process.

Question 6

Do you see the Postal Rate Commission as primarily a regulatory body or as an advisory body?

The Commission has varied functions which change its role from advisory to regulatory to appellate. In rate and classsification cases, where the Postal Service has a partial monopoly, the Postal Service must submit requests for changes to the Commission. Although the Governors of the Postal Service may in narrow circumstances modify a Commission rate or classification recommendation, the courts have held that the Commission is the expert costing body whose decision must be given judicial deference. If the Postal Service requests a change in the nature of services, the Commission issues only an advisory opinion to the Postal Service.

Patrons of any post office may appeal a closing or consolidation of that office to the Commission. In that capacity the Commission acts as an appellate body which reviews the Postal Service's decision and must either affirm it or remand it for further consideration. It does no factfinding and cannot substitute its judgment for the Service's.

As evidenced by the Commission's report to the Congress on Preferred Rate Mail, the Commission also advises Congress and the Administration in areas of its expertise.

Question 7

Should the Postal Rate Commission have any part in management issues of the Postal Service?

The Commission's responsibilities do include ratemaking and not management of the Postal Service. However, there is never a

perfect bright line between management and ratemaking. Inevitably there will be Postal Service policy initiatives that have cost consequences. These cost consequences may affect rates. Thus, the Commission may have to look behind a management decision to examine it for its effect upon areas of our responsibility -- a fair and equitable rate and classification structure.

A related question is whether Postal management and the Commission should consult, more than they now do, on management questions.

Apart from the separateness of our institutional roles, there is a certain constraint on discussions which could point toward a conclusion in a later rate case. However, that concern, while legitimate, can be allayed through making such exchanges of views public. In one type of situation -- that where the Service is proposing rules -- we have been able to contribute through written comments. Perhaps, where the Service contemplates policy changes not involving rulemaking, there is room for a similarly open, yet informal, dialogue. If so, we would welcome it.

Question 8

What steps have you taken to improve the operation of the Postal Rate Commission?

The key function of Commission operation is information. We must obtain, examine, analyze and explain information on postal operations, services and finances. During my term as Chairman, we have improved our ability to do this.

The Commission undertook a thorough review of its rules concerning the filing of periodic reports and information by the Postal Service. After this review we promulgated amended rules to reduce paperwork burdens on the Service yet provide more timely information to us.

Within the last five years the Commission purchased its own computer capacity, which has paid for itself.

We moved to a new location with a more efficient space design and lower rental charges. In the course of the move the Commission purchased a modern, economical, and more flexible telephone system.

In 1985 the Commission conducted a study of staffing needs which resulted in a staff reorganization with a more efficient management and staffing structure.

With these changes the Commission can more readily meet its statutory duties and provide up-to-date and accurate information to the Administration, Congress, Postal Service, mailing industry and the American public. We can do this more rapidly, yet with

no expansion of resources. This has been a cooperative effort, heavily dependent on the skill, collegiality, and contributions of my fellow Commissioners.

IV. POSTAL SERVICE OPERATIONS

Question 1

Do you question the need for any service currently provided by the Postal Service? If so, please explain.

No. Services provided are, as they should be, under constant review and evaluation by the Postal Service and the public. The Commission should continue to be ready to hear requests for consideration of changes and innovations in services.

Question 2

Do you believe that the goal of the self-sustaining Postal Service is realistic? Please explain.

Yes. With the exception of the revenue forgone appropriation, which reimburses the Service for reduced rate postage categories and relatively minimal liabilities for the old Post Office Department, the Postal Service is currently self-sustaining. Assuming vigilant attention to cost control, service standards and long-range planning for volume fluctuations this should continue to be the case.

Question 3

How do you believe the public interest in maintaining current postal levels should be balanced with the costs of continuing these services?

That balance should be struck by insuring that no postal service is priced to subsidize another service. Rates for each service should cover the costs of providing that service. Through a full public hearing, the Commission receives testimony on what services the public needs and wants, how much the public is willing to pay for those services, and the costs of providing those services. From that record the Commission can recommend a fair and equitable postal rate and classification structure.

Question 4

If substantial reductions in the Revenue Forgone appropriation are approved, would you look to achieve savings or would you favor across-the-board rate increases?

Currently, appropriations to the Postal Service go to support the reduced rates for nonprofit mail, in-county publications, and other historically favored categories. They do

not -- unlike the now obsolete public service appropriation -- fund general operations of the Postal Service. I endorse the conclusions of the PRC Preferred Rate Study (June 18, 1986) as regards the best way to deal with these mail subsidies. I welcome any efforts by management to streamline existing operations. Savings from those efforts would ease any financial pressure due to reductions in appropriations.

V. POSTAL REORGANIZATION

Question 1

How do you view the Postal Reorganization Act today?

Much has been accomplished under the Postal Reorganization Act. I have over time suggested amendments including final decision authority for the Commission. It, like any statute, does not exist in a vacuum and should be, as it has been, subject to continuous review by policy makers. For the most part, however, it has served well the goal of establishing a self-sustaining Postal Service.

Question 2

What do you see as the strengths and weaknesses of the Postal Service as opposed to the old Post Office Department?

The Postal Reorganization Act of 1970 was meant to provide postal managers with greater flexibility and hence to enhance the efficiency of the Service. That, and the principles that the Service is self-sustaining and is funded by rates based on thorough public review, are I believe, the major strengths of the present day Postal Service and in strong contrast to the old Post Office Department which incurred repeated and substantial deficits. The question of a loss of accountability has been raised, however, and no doubt will be again. That problem may be in part due to a failure of communication and lack of accurate and timely information.

Question 3

If Congress were to reexamine the role and responsibilities of the Postal Rate Commission, what changes would you recommend? What do you see as the strengths of the Commission?

The ratemaking process requires that all interested persons have up-to-date and accurate data upon which to base arguments and decisions. I would recommend that the Commission be given subpoena power. As I explained elsewhere, I also recommend that the Commission have final decision authority, with the Governors having the right to seek reconsideration of a decision. Finally, I recommend that the Commission be granted authority to use notice and comment procedure for minor classification cases. This might reduce time required by the Commission to render a

decision on an issue where all parties do not agree, but where material fact issues are absent, and might reduce costs to participate in such a proceeding.

The special strengths of the Commission, as I see them, are two: its ability to serve as an objective forum and decisionmaker, and its expertise. The former, of course, is inherent in the statute Congress wrote for us. The regulatory provisions of the Act demand decisions based on empirical fact, not just generalized policy judgments. That in turn means we have to develop specialized expertise. Our Commission has done this, to a large degree, because the Commissioners who ultimately decide the case also hear all the evidence, sitting en banc.

VI. RELATIONS WITH CONGRESS

Question 1

Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

Question 2

Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

Question 3

Do you believe that Congress should have an increased role in reviewing decisions involving postal rates and services?

I believe in vigorous and continuing Congressional oversight. It is in the best interest of the postal system. Congressional delegation of rate and classification authority has, however, proven to be a wise decision. As a specialized agency, the Postal Rate Commission provides an important public forum, compiles a complete evidentiary record, and has the expertise to give a full reasoned explanation of changes in rates or classes. These abilities make Congressional oversight more effective as well, by showing what assumptions and analytical techniques the postal establishment is using.

POST-HEARING QUESTIONS FOR MS. STEIGER FROM SENATOR GORE

Question 1

Mrs. Steiger, you deserve congratulations for the job well done on the Postal Rate Commission's study of the revenue foregone program. I'm curious though, of what you think the possibility is for raising the limit suggested in the report of a circulation of 20,000. I ran an analysis for papers in my state, and there were a number of rural papers, the kind for which the subsidy was clearly intended, that have circulation in the range of 20-25,000. Would it create a great imbalance to raise that limit slightly? I appreciate that the findings that there is a problem with essentially urban papers that are getting the advantage of this subsidy, and it wasn't intended for them, but I'm concerned that your suggested limit is just a little too low. Do you have any comment?

Let me first explain the origin of the 20,000 copy "cap" as discussed in the PRC Study. It was not a recommendation of the PRC Study, but rather a proposal that emerged in the FY 1986 budget reconciliation process. S. 1730, as reported from the Budget Committee on October 2, 1985, contained, in section 805, an amendment to section 3626 of title 39, adding the sentence:

> In the administration of this section, the rates of postage for mail under subsections (a), (b), and (c) of former section 4358 of this title shall apply to not more than 20,000 copies of each issue of a publication mailed at such rates.

As enacted, the reconciliation resolution did not contain this cap. However, the conference report indicated continuing interest in the concept, and we were specifically asked to study it:

> . . . The conferees take specific note of this agreement in section 15104 to amend the Senate bill's provision concerning eligibility for the in-county rate by deleting the limit of 20,000 copies per issue. The conferees hereby direct the Postal Rate Commission to include in its study a specific determination of the number and types of publications which would have been adversely affected had the 20,000 "cap" remained in the new 39 U.S.C. 3626(f).

Statement of Managers, as reprinted in the PRC Study Notice, 51 Fed. Reg. 3867, 3869 (January 30, 1986). This is the origin of the discussion of the cap in the PRC report.

Hence, Congress -- if it now wished to consider imposing a cap -- would be writing on a clean slate. The PRC Study does not give prima facie validity to either 20,000 copies or any other particular figure. Research of the kind you have already carried

out would no doubt be largely determinative of the level at which such a cap might be set.

Question 2

Does the Commission have any intention of studying the relative equity of the rates being charged for commercial 3rd class mailers in the next rate case?

The Commission does intend to examine the relative equity of commercial third-class rates in the next rate case; indeed, it must do this to fulfill its statutory mandate. Section 3622 of the Act requires us to recommend a "fair and equitable" rate schedule, and lists a number of more specific criteria -- including value of service, degree of mailer preparation, and effects on competition -- which we must consider in doing so.

An examination of this kind was made in the previous rate case, Docket R84-1. We considered and made findings on the appropriate cost coverage (i.e., proportion of unattributable costs) to be assigned to third-class bulk regular rate mail, its value of service, whether the rates caused unfair competitive effects on newspapers or private advertising distribution services, and the consequences of mailer presortation. All of these areas, incidentally, were challenged by various user and competitor groups, and the Commission's treatment was fully upheld by the court. Direct Marketing Association v. United States Postal Service, 778 F.2d 96 (2d Cir. 1985).

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** James Edward Colvard

2. **Position to which nominated:** Deputy Director, U.S. Office of Personnel Management

3. **Date of nomination:** June 3, 1986

4. **Address:** (List current place of residence and office addresses.)

Residence: Route 1, Box 768
King George, VA 22485

Office: U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

5. **Date and place of birth:** March 16, 1932, Robbinsville, NC

6. **Marital status:** (Include maiden name of wife or husband's name.)

Married to Joy Helen (Alexander) Colvard

7. **Names and ages of children:** Belinda Marie (Colvard) Cameron
Age: 22

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Robbinsville High School Robbinsville, NC 28771	1946-1950	Diploma 1950
Berea College Berea, KY	1950-1952	
Berea College Berea, KY	1955-1958	B.A. 1958
Missouri School of Mines Rolla, MO 65401	1958-1958	
University of Oklahoma Norman, OK 73069	1970-1973	M.A. 1973
University of Southern California Washington, D.C.	1978-1982	D.P.A. 1982

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Physicist	Naval Weapons Center China Lake, CA	7/58-9/60
R&D Mgmt.	Applied Physics Lab John Hopkins University Laurel, MD	9/60-7/61
R&D Mgmt.	Naval Weapons Center China Lake, CA	7/61-8/69
R&D Mgmt.	Naval Surface Weapons Center Dahlgren, VA	8/69-4/80
R&D Mgmt.	Naval Material Command The Pentagon	4/80-7/85
Personnel Mgmt.	Navy Department Manpower & Reserve Affairs The Pentagon	7/85-1/86
Personnel Mgmt.	U.S. Office of Personnel Management Washington, D.C.	1/86-Present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above. None.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution. None.

12. **Memberships:** List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Professional:

American Defense Preparedness Association
National Academy of Public Administration, Member
American Society for Public Administration, Member
Sigma Pi Sigma

Honor Society:

Phi Kappa Phi, Member

13. **Political affiliations and activities:**

a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years. None.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

1) Michelson Laboratory Fellowship Award for Management from the Naval Weapons Center - 1968
2) Navy Distinguished Civilian Service Award - 1977
3) Dept. of Defense Distinguished Civilian Service Award - 1983
4) Presidential Rank Awards for the Senior Executive Service - 1980, 1985
5) Elected to the National Academy of Public Administration - 1985

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

1) "The Development And Utilization Of Civilian Executives In The Naval Material Command", Dissertation, School of Public Administration, University of Southern California, December 1982.
2) "Performance, Pay and Promises", The Bureaucrat, Winter 1982-83, Vol. 11, No. 4, p. 28.
3) "What Price Mistrust?", The Bureaucrat, Fall 1984, Vol. 13, No. 3, p. 3.
4) "A-76 - A Mixed Blessing", The Bureaucrat, Winter 1984-85, Vol.13, No.4, p.56.
5) "Technological Transformation of Defense", The Bureaucrat, Spring 1985, Vol.14, No.1, p.17.
6) "Cost of Object or Object of Cost?", written with Alan W. Beck. The Bureaucrat, Winter 1985-86, Vol.14, No.4, p.19.
7) "Cutout: The Ultimate Cutback Management", The Bureaucrat, Spring 1986, Vol.15, No.1, p.6.

16. **Speeches:** Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

I have not delivered any formal speeches relevant to the Deputy Director position at the U.S. Office of Personnel Management.

17. **Selection:**

a) Do you know why you were chosen for this nomination by the President?

To provide the new Director, Constance Horner, with a deputy who had proven management experience and a civil service career background.

b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My more than 25 years as a career civil servant, of which 20 have entailed significant management responsibility, qualify me for the position of Deputy Director, U.S. Office of Personnel Management.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Not appropriate since I am a career civil servant.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

I have taught courses for the University of Southern California in the past. While I am not committed to do so, I would consider doing that in the future.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) I will recuse myself from any decisions relative to the National Academy of Public Administration and the American Society for Public Administration.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. I have never been personally cited for any activities listed in the question. As a senior official in the Navy for many years I have been listed in grievances and appeals, but only by virtue of my position as a reviewing official.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details. No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

PRE-HEARING QUESTIONS FOR JAMES COLVARD

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Is there any issue currently under consideration by the Office of Personnel Management from which you have to disqualify yourself?

No.

2. Were there any such issues during your service at the Department of the Navy? If so, please explain.

No.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as Deputy Director? If so, please describe these commitments and to whom they were made.

I am committed to the policies of President Reagan.

4. Why did you take this appointment to be Deputy Director of OPM?

After nearly 30 years of Federal employment, I believe I have an understanding of both the rewards of public service and the obstacles that our personnel system throws in front of employees who strive to excel. I hope that I can bring this knowledge to bear in assisting Director Horner in managing the Federal work force.

II. RESPONSIBILITIES OF THE DEPUTY DIRECTOR OF OPM

1. What do you believe are the most important functions of the position of Deputy Director?

The Director of OPM, like the head of any Federal agency is necessarily required to spend most of her time in dealing with the President, Congress, top executive branch officials, and other key participants in the formulation of Governmentwide policy. The Deputy Director, then, must assist the Director in formulating policy and in seeing that it is executed successfully in the day-to-day management of OPM.

2. Describe the relationship you expect to have to the Director and Associate Directors of OPM.

I hope to work closely with the Director in the formulation of policy. The Associate Directors are, of course, responsible for the initial development of policy for their program areas, as well as for its execution, but I expect to be able to coordinate and focus their efforts from an agency-wide perspective. I do not want to become any sort of filter between the Associate Directors and the Director, but I think that my 30 years in the trenches of Government will enable me to assist the Director in decision-making and in overseeing policy execution.

3. Do you believe action needs to be taken to improve the morale and productivity of Government employees? If so, what?

I think that the morale of Federal employees has suffered due to the lack of public confidence in some aspects of our personnel system, as well as due to obstacles the system has created for the employees it was designed to protect. The establishment of the new, more equitable Federal Employees' Retirement System will prove to be a major step forward in winning both public and employee confidence in the fairness of our system for compensating Federal employees. OPM's proposed "Civil Service Simplification Act of 1986" will give us the opportunity to discard much unnecessary paperwork and get on with our job of serving the public. The pay-for-performance aspects of this proposal are especially important from the perspectives of employee morale and public confidence, and will have a dramatic impact on improving productivity.

Finally, I think increased recognition of the quality of the Federal work force and the value of its work is very important. Director Horner has been making major efforts to bring these matters to public attention, and I think this is having a significant impact on morale and productivity.

4. What actions will you take as Deputy Director of OPM to improve both the capability and the public perception of the civil service?

As Deputy Director of OPM, I would join Director Horner in actively speaking out on the value and quality of our career civil service. I believe that a nonpartisan career civil service is an essential cornerstone to our system of government, and after serving in a wide variety of positions during my career, I think I can make this argument with authority. I also intend to support as strongly as I can the concepts embodied in the Administration's "Civil Service Simplification Act" proposal. This proposal will, I believe, free our civil servants from a great deal of purposeless paperwork, and put them under a system where they will know what they're expected to do, and that they'll be rewarded if they do it. This may seem like only elementary common sense, but I can assure you that it is in fact a change, a major change, from the way our personnel system has operated in the past.

5. What steps will you take to improve the operations of OPM itself?

Director Horner believes in a collegial approach to defining and solving problems, where the points of view of both career and noncareer employees can be heard and considered. I have watched this approach in operation and it works well. I look forward to assisting the Director in this. As someone with a long career of operational responsibilities at an agency, I also expect to be able to bring to this decision-making process the perspective of agency managers. I will try to maintain close communications with the agencies to ensure that OPM is supporting their efforts to manage at the level where the Government's actual work gets done.

III. INTERNAL AND EXTERNAL RELATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

1. What should be the relationship of OPM to (a) the President, (b) the Congress, and (c) other Executive agencies?

The Director of OPM works for the President, advising him on policies affecting the Federal work force and seeing to it that his decisions are carried out effectively. All of this is done

within the framework of the laws passed by Congress, and must be done in close cooperation with Congress. Congress has a legitimate and meaningful role in overseeing OPM's stewardship of the responsibilities and public monies the laws give us, and we need to work effectively with Congress to achieve our mutual goal of an effective and efficient public service, operated in accordance with merit principles. In dealing with the other Executive agencies, OPM has the dual role of (1) supporting the agencies' efforts to manage, recognizing that it is the other agencies that provide the direct services of government to the people, and (2) ensuring that the agencies carry out their personnel management responsibilities in accordance with the laws and merit principles. Rather than conflicting, these two responsibilities are almost always complementary and mutually supportive.

2. What is your view of the role of OPM in relation to the Merit Systems Protection Board, the Special Counsel, and the Federal Labor Relations Authority?

While OPM and the other merit system agencies are separate and independent, their roles are complementary and their ultimate goal is the same: an effective and efficient civil service, operated in accordance with the law and the merit principles. OPM has the basic responsibility for overseeing the operation of the personnel system, while the other agencies help ensure that the system is operating fairly and legally in specific cases, and that the rights of employees to deal collectively with their employer under the law are observed. The law provides mechanisms for OPM to present its views when necessary before the other agencies, so that decisions in specific cases do not do some unintended damage to the system as a whole.

3. Do you believe any changes in the functions and authority of your office, the Special Counsel, or the Merit Systems Protection Board are warranted?

I would like to reserve judgment on this question until I have served as Deputy Director long enough to have actually studied things in operation.

4. In 1983, the Congress gave the Director, Office of Government Ethics, substantial independence and autonomy. Will you support and preserve the independent standing of this Office?

Yes.

5. What should be the relationship of OPM to OMB?

This is a very complex relationship, since OPM and OMB are each, in a sense, a client and an overseer of the other in our respective program areas. Both agencies are responsible directly to the President as his central staff agencies for assisting him in managing, on the one hand, money, and on the other hand, the Government's personnel resources. It is essential that the two agencies work closely and cooperatively in implementing the laws and the President's policies.

6. Please describe your concept of the appropriate role of OPM in relation to individual departments and agencies.

OPM's role, as a staff agency to the President, is both support and oversight. We must ensure that we do everything we can to help agencies deliver their program services effectively and efficiently, while at the same time ensuring that they operate their personnel systems in accordance with the law and merit principles. I believe these goals are mutually supportive.

IV. THE CIVIL SERVICE REFORM ACT

1. What oversight procedures, if any, are needed to monitor the implementation of the Civil Service Reform Act and assure compliance with merit principles?

With the enactment of the Civil Service Reform Act, the task of overseeing the civil service became much more complex. We have gone beyond only compliance with laws and regulations--which remains essential, let me emphasize--to attempts to monitor and improve the quality and productivity of the work force. The complexity of these demands has been further complicated by necessary limitations on resources. Various approaches to evaluation have been tried, but none has proven

entirely successful. The recent OPM reorganization, integrating the evaluation function with our other agency-oriented personnel system functions, will give renewed emphasis to this activity and should help with OPM's continuing efforts to do a better job.

2. What changes, if any, would you propose to make the Civil Service Reform Act and/or the civil service itself more responsive and effective?

The proposed "Civil Service Simplification Act of 1986" is a major step in furthering the goals of the Civil Service Reform Act. It will correct counterproductive and outmoded aspects of our personnel system, while building on the earlier Act's efforts to motivate and reward good performance.

V. PRIVATE SECTOR HUMAN RESOURCES MANAGEMENT PRACTICES

1. A study completed last year by McManus Associates for the President's Council on Management Improvement identifies five critical human resources program features found in the private sector and State and local governments. Please comment for each of these features on the extent to which you will be encouraging their incorporation into department and agency human resource programs. They are:

* Integrating business/program planning with human resources planning.

This is simple common sense, and is fundamental to the way the Department of Defense does business. Accordingly, I am very familiar with this approach, and will support it strongly.

* Streamlining the human resources function by centralizing certain critical functions and totally decentralizing others.

I support this approach, which is central to the proposed "Civil Service Simplification Act," with its centralized design of the structure, decentralized implementation and operations, and finally, centralized evaluation and oversight. Anytime you have such decentralization, it is

essential that you have responsible and effective oversight to be sure that any delegated authority is being used effectively and properly.

* Improving productivity through the use of comprehensive effectiveness indicators, employee involvement programs, and health and fitness programs.

The use of such effectiveness indicators is central to the evaluation approach OPM has been developing recently, and which we are going to continue to develop, trying to make the indicators more meaningful and useful. With respect to health and fitness programs, this has been a special area of emphasis for Director Horner, and I look forward to supporting her efforts.

* Requiring management development and succession planning programs.

This again is a fundamental principle of good management, and one which I supported and implemented at the Navy Department. I expect to support use of this concept throughout the Government.

* Developing comprehensive automated human resource information systems.

OPM has been putting considerable effort into the redesign of the Central Personnel Data File, as part of the Administration's Reform 88 efforts. Obviously, the key problem is to balance our needs for information at the central agency level with reasonableness in requiring the collection of data at the operating level, where we are trying to minimize paperwork. I am confident we will be able to develop a truly useful and reliable statistical reporting system.

VI. FEDERAL WORK FORCE

1. How do you define productivity in the Federal work force? What measures would you suggest, beyond those recently taken by the President and OMB, to improve productivity?

Much progress has been made in recent years in defining and measuring productivity in the Federal work force, but this remains an elusive area, since it is quality of work product, rather than units of production, that is of the greatest importance in many of the Government's functions. In this, we are like many other service organizations.

Improvements in productivity ultimately have to come from the employees themselves. I believe the best way to achieve such improvements is to remove the obstacles our personnel system places in the way of employees, and instead clearly relate employee performance with their pay.

2. What is your view of the quality of Federal executives in the Senior Executive Service? How would you improve that quality, if needed?

The quality of our senior executives is generally very good, though some of them, I'm afraid, do not really have the sort of breadth of managerial experience and perspective one expects in a bona fide executive. I personally think that the Civil Service Reform Act swept into the Senior Executive Service some people who were really technical specialists or functional managers rather than executives. Several reviews of the SES, including the Grace Commission, have concluded that we should consider narrowing the definition of positions covered by the SES to truly executive positions. I don't want this to sound like separating the wheat from the chaff, since the non-executive positions are also crucial to the functioning of the Government, as they include many of our most essential technical specialists and functional managers--but they are not executives, and shouldn't be covered under a personnel system designed to develop and motivate a cadre of generalist executives.

3. What actions would you take to stem the loss of high-grade, highly trained professionals in technical fields?

I have had much experience in my career with recruiting and retaining scientists and engineers, even at non-competitive pay rates, and I know that the key is giving them challenging work and showing that you appreciate their efforts. Here

again, based on our success with the Navy's personnel demonstration project at China Lake and San Diego, California, I think the proposed "Civil Service Simplification Act" holds the key to freeing up our personnel system so that it effectively links performance with pay, and convinces the best employees that their accomplishments will be recognized and rewarded.

4. GAO has recommended substantial improvements in Federal work force planning procedures. Do you agree with GAO's recommendations and what would you do to implement them?

Work force planning is a serious problem in the Government, and one that we've been wrestling with for many years. I have long felt that there was too much emphasis in our system on managing by personnel ceilings rather than by budget, creating artifical distortions in our work force. However, I recognize that personnel ceilings have served as one of the executive branch's best tools for controlling the size of Government. I think that as we move toward greater managerial accountability for the effective and economical use of personnel resources, we will be able to move away from reliance on the admittedly simplistic personnel ceiling approach and toward more sophisticated work force planning.

5. We continue to hear about the grade bulge in the GS-11/15 area. In your opinion, is there really a problem? If so, why? What would you do to correct the problem?

There is a problem of too many people at too high grades, but it's largely a symptom of the problem of our existing classification system, where the only way a manager can reward a good employee is by upgrading him. If we can move toward budget accountability as the basis for Federal management, the grade bulge will no longer exist.

6. The U.S. Navy is delegating classification authority to "line supervisors." What is your opinion of the Navy's action? Would you suggest that this be adopted by other agencies?

I agree with the Navy's action, since I believe that managers should be responsible, and accountable, for managing their personnel resources,

rather than having the accountability diffused among different parts of the organization. However, as we move in this direction, it will be important that we simplify the classification process, so that managers will be able to carry out this responsibility effectively, without getting bogged down in the voluminous standards and procedures now involved in even the simplest of classification actions.

VII. MANAGEMENT ISSUES

1. How do you think the process for replacing the PACE examination with new examinations for hiring Federal employees can be accelerated?

Tremendous strides have been made in replacing the PACE examination, with new competitive examinations in place for the occupations that make up 60 percent of our PACE-type hiring. Nevertheless, the basic issue of how to recruit and select the best possible generalists into the civil service remains, in my view, one of the most important issues we face. As a result of OPM's recent reorganization, we now have a new Career Entry Group that will be able to bring a new emphasis to this and other key staffing issues.

2. The Grace Commission, in its Federal Management Systems Report, said that career professionals are not provided with suitable insights into what the Administration expects their agencies to accomplish.

* How will you improve communications with employees at OPM and in other Federal agencies on personnel management issues?

As I mentioned previously, Director Horner believes very strongly in managing in a collegial fashion, with strong interplay and communication involving both career and noncareer employees. This works well, and I'm sure we will have no communication problems at OPM. With respect to other agencies, Director Horner has been very active in meeting and talking with Federal managers and employees, and I hope to join her in this work, as well as in the more formal communications channels we have with agencies through the Interagency Advisory Group and the Federal Personnel Manual System.

* Do you see the Federal Executive Boards as an effective communications tool and how will you use them to communicate with Federal managers in the field?

Yes, the Federal Executive Boards are a key to effective communications with the field, and Director Horner and I are both committed to their use. In visits to the field, the Director and I have made a special effort to ensure that we meet with the FEB's.

3. The National Academy of Public Administration's 1983 report on Revitalizing Federal Management recommended that OPM take the lead in planning and promoting a major program to strengthen the personnel role of Federal managers, including taking greater control over critical personnel processes such as recruitment and classification.

* Do you support the concept of holding Federal managers responsible and accountable for personnel management?

After my 30 years in the Federal service, this is the single issue about which I feel most strongly. I believe the problems we have had with personnel management have largely been the result of treating it as something apart from the basic responsibilities of our managers. This is the reason I am such a strong advocate of the Administration's proposed "Civil Service Simplification Act."

* Do you believe more personnel management responsibilities should be delegated to line managers?

Very definitely, although I believe we must also simplify the personnel system's procedures so that line managers will be able to understand and carry out this added responsibility.

4. Under 5 U.S.C. 4703, OPM has the authority to conduct and evaluate demonstration projects that would result in improved Federal personnel management. To what extent do you believe that authority should be used?

I believe the demonstration project authority, through the success of the "China Lake" project alone, has proven itself to be one of the most

important elements of the Civil Service Reform Act. I think we should have more such projects, and I hope we will be able to encourage greater use of this authority, such as through the project now in development for McClellan Air Force Base, involving "gainsharing" in a unionized activity.

VIII. EMPLOYEE BENEFITS

1. Do you support the basic premise of pay comparability? Do you believe the current system should be changed? Do you believe that pay and benefits should be considered as a single compensation package?

I support the basic premise of pay comparability, but think we must recognize that the measurement of comparability is a difficult and controversial task. There has been much criticism that the survey used in the comparability process excludes many smaller firms, as well as State and local governments. Certainly, we need to have a survey that is as broadly representative as possible.

While the whole compensation package is something to keep an eye on, it is probably impractical to attempt any sort of simplistic, mechanical comparison and adjustment of total compensation. Each element of compensation needs to be assessed and managed on its own, since each element appeals differently to different portions of the work force.

2. What changes, if any, will you propose as Deputy Director of OPM to Federal leave policies?

I have no specific plans to propose any changes in this area. My impression is that our leave program is very generous overall, though perhaps deficient in the area of short-term disabilities.

3. How would an early-out retirement window help the Federal work force?

Certainly, if we are facing widespread personnel reductions, this would be a humane way to deal with the situation. However, I would be very concerned that, unless managers had considerable control over who could take advantage of such an

opportunity, we could lose some of our very best, most valuable people, even in critical program areas where no personnel reductions were scheduled.

IX. RELATIONS WITH CONGRESS

1. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Yes.

2. If you are confirmed, do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress?

Yes.

RESPONSES TO ADDITIONAL QUESTIONS FROM
SENATOR EAGLETON

OPM responsibility for enforcement of civil service laws

6. Q. The Civil Service Reform Act also states that OPM is responsible for enforcing the civil service laws and related policies. Do you agree that means OPM will do what is necessary to assure that agencies comply with civil service laws and related requirements?

A. Certainly. Having worked in an agency for many years, I believe agency managers are almost universally anxious to comply with the laws and regulations, and most failures are due to ignorance or confusion rather than ill intent. In helping Director Horner run OPM, I plan to pay particular attention to OPM's efforts to communicate with agency managers, to help make sure that we are explaining requirements to them clearly and in terms they can understand.

7. Q. I assume you would also agree that OPM should have reliable means to determine if agencies are complying with civil service policies.

A. Yes.

Questions on proposed Civil Service Simplification Act

9. Q. In your responses to prehearing questions on improving the morale and productivity of Government employees, you say that the proposed Civil Service Simplification Act (which is largely based on the experience at two Navy labs) is the key to progress on this front. While this is not the time to explore that proposal in depth, I do want to ask several questions since you seem to place so much stock in that proposal.

I am advised that the proposal, if enacted, would give OPM vast new discretionary powers, including the authority to change significantly basic policies Congress has established by law for job classification and pay. (This would occur when OPM approves agency plans contrary to existing law.) In light of OPM's marginal performance under the Civil Service

Reform Act, shouldn't the proposed Simplification Act include definitive criteria and limits within which the present and future OPM Directors would be authorized to approve agency plans that deviate from existing law?

A. I think that, on close examination of the Civil Service Simplification Act proposal, critics of the proposal would find that the departure from current law is not as great as it might first appear. The career paths and pay bands of the proposed System are built on the framework of the existing General Schedule rather than discarding it. What we are doing is eliminating many arbitrary and meaningless paperwork distinctions the current system requires. For instance, if in the real world there is little actual difference between the work done by GS-9 and GS-11 engineers, we would combine the two grades into one pay band, eliminating the requirement that managers create an artifical distinction between them. The resulting pay band would cover the range between GS-9, step 1, and GS-11, step 10. Employees would move through this pay band on the basis of performance, much like the current PMRS system. The General Schedule statutory grade definitions, classification standards, and rate ranges would continue to be the basis for the system--it would just all be vastly simplified and made easier to apply.

10. Q. Under the proposed Simplification Act, agencies could continue to operate under the existing job classification system if they chose to do so. What assurance do we have that OPM will maintain the classification standards for the current system since OPM has discontinued updating those standards (except for the very limited number recently authorized by Mrs. Horner)?

A. OPM has resumed developing and publishing classification standards, and this work will continue, since these General Schedule classification standards will be necessary under the Simplification Act for assigning positions to career paths and pay bands and since we are proposing to expand the alternative system in an incremental fashion the standards will continue to be needed for some time. I do hope, however, that we'll be able to make the classification standards clearer and easier to use as more and more agencies move under the Simplification Act and we no longer have to engage in the hair-splitting the current system requires.

11. Q. In light of the Merit System Protection Board's conclusions that OPM is not fulfilling its oversight and enforcement responsibilities, wouldn't it be appropriate for the proposed Simplification Act to be more precise on what constitutes a minimum monitoring and enforcement role for OPM after it approves agency plans?

A. The question of what degree of evaluation and oversight can and should be achieved, and at what cost, is probably never-ending. I would expect, however, that the Simplification Act will actually make evaluation and enforcement easier, since it will eliminate many unnecessary requirements of the current system, essentially stripping it down to what's really important, and allow us to focus our oversight more on results and less on procedures. It's also worth mentioning that the Simplifcation Act retains one of our basic enforcement methods, by permitting every employee to come directly to OPM if he believes his position is in the wrong career path or pay band, just as employees can now appeal the classification of their positions to OPM.

BIOGRAPHICAL AND FINANCIAL INFORMATION
REQUESTED OF NOMINEE MARY FOLLIARD WIESEMAN

A. BIOGRAPHICAL INFORMATION

1. Name: Mary Folliard Wieseman; formerly, Mary Elizabeth Folliard

2. Position to which nominated: Special Counsel of the Merit Systems Protection Board

3. Date of nomination: June 20, 1986

4. Address: Home - 1098 Larkspur Terrace
Rockville, Maryland 20850

Office - Small Business Administration
1441 L Street, N.W.
Washington, D. C. 20416

5. Date and place of birth: September 14, 1942
Washington, D. C.

6. Marital status: Married to J. Theodore Wieseman
June 27, 1970

7. Names and ages of children: Theodore Molloy Wieseman, 14
Moira Gannon Wieseman, 12
Joseph Hall Wieseman, 9

8. Education: Immaculata Preparatory School
September 1956 to June 1960

Catholic University
September 1960 to June 1964
B.A.

Catholic University School of Law
September 1964 to June 1967
LL.B.

9. Employment Record:

5/83 - Present	Inspector General U.S. Small Business Administration 1441 L Street, N.W. Washington, D. C. 20416
3/82 - 2/83	Legal Services Corporation 733 15th St., N.W. Washington, D. C. Acting General Counsel

11/75 - 4/83	Wieseman, Wieseman & Gallagher 25 Wood Lane Rockville, Maryland Partner
4/75 - 5/76	Department of Health, Education & Welfare Office of General Counsel 5600 Fishers Lane Rockville, Maryland Attorney
5/74 - 12/74	Law Enforcement Assistance Administration 6th & D Streets Washington, D. C. Consultant for the National Institute for Law Enforcement and Criminal Justice
11/72 - 5/74	Private Practice - Part-Time 6005 Southport Drive Rockville, Maryland Attorney
10/71 - 5/72	Department of Health, Education & Welfare St. Elizabeth's Hospital 2700 Martin Luther King, Jr. Avenue, S.E. Washington, D. C. Legal Counsel
7/68 - 10/71	U.S. Attorney's Office U.S. Courthouse Washington, D. C. Assistant U.S. Attorney
9/67 - 7/68	Department of Justice Civil Division 9th & Pennsylvania Avenue, N.W. Washington, D. C. Attorney
6/66 - 9/66	Natl. Aeronautics & Space Administration Washington, D. C. Summer Law Clerk
6/64 - 11/65	C & P Telephone Company 13th Street, N.W. Washington, D. C. Clerk (Part-Time)

10. Government experience: None

11. Business relationships: Wieseman, Wieseman & Gallagher; partner 1975 to 1983
Association of Federal Investigators, Member of Board of Directors: 1985 to present

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Montgomery County Bar Association

Women's Bar Association of Montgomery County

Maryland State Bar Association

District of Columbia Bar

Women's Legal Defense Fund

College Gardens PTA

Women's Bar Association of Maryland

Kappa Tau Gamma Sorority - Catholic University

Association of Government Accountants

Association of Federal Investigators, Board of Directors

Assistant U.S. Attorneys' Association

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years. None.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

1964 Phi Beta Kappa
Catholic University

1964 - 1967 — Law School Scholarship
Catholic University School of Law

Law Review Editorial Board
Catholic University

1967 - 1968 — Honors Program
Department of Justice

15. Published writings: List the titles, publishers, and dates of books, reports, or other published materials which you have written.

1966 and 1967 — Catholic University Law Review;
Student case notes

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. Selection: (a) Do you know why you were chosen for this nomination by the President?

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

(a) I believe I was chosen for this nomination because of my experience in and out of government.

(b) I have been a lawyer for nineteen years. I was selected for the Department of Justice Honors Program upon graduation from law school in 1967. I served there in the Civil Division, until becoming an Assistant United States Attorney for the District of Columbia. In that position, I had the opportunity to work with the Department of Justice, as well as many other Federal agencies in cases involving numerous Federal programs. I handled criminal and civil matters on the trial and appellate level. In private practice for seven years, I was involved in litigation, both civil and criminal. As Inspector General of the Small Business Administration, I have had the opportunity to manage a national office of auditors, investigators and lawyers. All of this experience, both in and out of government, has prepared me for this appointment.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

My present employer is the United States. I have no other business associations, except that I may collect, from time to time, a judgement for attorney fees derived from Wieseman and Wieseman for work performed before my federal appointment.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I may collect from time to time accounts receivable from Wieseman and Wieseman for work performed before my federal appointment.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   In accordance with the Inspector General Act of 1978 and as a member of the President's Council on Integrity and Efficiency, I have commented on legislation relating to the economy and efficiency of government and legislation pertaining to the detection and prevention of fraud, waste and abuse. Also, as Inspector General of the Small Business Administration, I have exercised authority under the Inspector General Act.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

   I do not have any potential conflict of interest. If one did arise, I would consult appropriate Government Ethics Office officials and take whatever action was necessary to resolve the potential conflict.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   Yes. Wieseman, Wieseman and Gallagher was a plaintiff in a lawsuit in Montgomery County District Court against a former client to collect a legal fee. Plaintiff was awarded judgement. Wieseman, Wieseman and

Gallagher v. Grundler. Also, I was sued in my official capacity by an employee of the Small Business office of Inspector General for alleged sex discrimination in the U.S. District Court for the District of Columbia. Judgement for defendant. Trout v. Wiesman.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

PRE-HEARING QUESTIONS FOR MARY F. WIESEMAN

I. NOMININATION PROCESS AND POTENTIAL CONFLICTS

Question 1. Is there any issue currently under consideration by the Office of Special Counsel (OSC) from which you may have to disqualify yourself? If so, please explain.

Answer. None that I am aware of.

Question 2. How were you selected to serve as Special Counsel of the Merit Systems Protection Board? Were any conditions, express or implied, attached to your nomination?

Answer. I have served as Inspector General of the Small Business Administration since May 1983. When the position of Special Counsel became available, I was asked to consider applying for it. I believe I was selected for the position because of my experience as a lawyer, both in and out of government, and based on my record as Inspector General of SBA.

No conditions, either express or implied, have been attached to my nomination.

Question 3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as Special Counsel? If so, please describe these commitments.

Answer. No

Question 4. Why did you take this appointment to be Special Counsel of the MSPB?

Answer. I took this appointment as Special Counsel because I feel that the effective operation of that Office is most important. The Special Counsel has the potential to effect real change for the better in government, and I felt that my experience as a lawyer, manager, and employee of the federal government would be an asset in seeking to realize the statutory objectives. I also feel that and the position will be a personal challenge to me.

Question 5. Why do you feel that you are particularly well qualified to serve in this position?

Answer. I have practiced law for almost twenty years, both as a government attorney and in private practice. As an attorney for the Department of Justice and as an Assistant U. S. Attorney, I had the opportunity to practice civil and criminal law, and to represent many departments

and agencies of the government in litigation. That experience gave me an understanding of the activities and programs of government on a broad scale. I have also been in private practice of law, and have learned to understand and represent individuals. Finally, I have had the experience of managing a large, national office as Inspector General of the Small Business Administration. In that position, I have worked with the Inspectors General across government. All of this experience, I believe, qualifies me to serve as Special Counsel.

II. THE OFFICE OF SPECIAL COUNSEL

Question 1. What do you believe to be the role and responsibilities of the Special Counsel?

Answer. The Special Counsel's duties and responsibilities are contained in the legislation creating the Office. Specifically, the Special Counsel is an independent, objective Office established to receive, evaluate, investigate and prosecute violations of the merit system and to enforce the Hatch Act.

The Special Counsel also provides a secure independent mechanism to receive allegations of violations of law, rules or regulations, mismanagement, a gross waste of funds, abuse of authority or a substantial and specific danger to public health or safety.

The Special Counsel has the responsibility to keep the President and Congress informed of the activities of the Office.

Question 2. How do you view the relationship between the Special Counsel and the Merit Systems Protection Board? What coordination do you expect between the Special Counsel and the MSPB?

Answer. The Special Counsel is independent of the Merit Systems Protection Board. The relationship is similar to the relationship between a prosecutor and the court.

Question 3. How do you see the relationship and responsibilities of the OSC to (a) the President; (b) the Congress; (c) the Office of Personnel Management; and (d) other executive agencies?

Answer. The OSC is responsible for keeping the President and Congress informed of the activities of the Office and to assure that the statutory responsibilities are met. To fulfill the duties of the Office, the OSC must be an independent, objective unit, with responsibility to carry out the statutory mandate. The OSC and Office of Personnel Management have a common goal of protecting the merit system, but the offices are clearly independent in their roles in effecting that result. The OSC has the

investigation, prosecution function, while the Office of Personnel Management performs the policy, management function.

With regard to the relationship with other government agencies, the OSC has the responsibility to inform the agencies of matters requiring investigation and to assure that appropriate action is taken. Again, the Office must be independent of any agency to fulfill its function. In prosecuting cases before the MSPB, the OSC may be in an adversary position to OPM as well as other government agencies.

Question 4. To what extent do you believe federal employee whistleblowers can help reduce waste and wrongdoing in the government? In your role as Inspector General at the Small Business Administration, how frequently did you deal with whistleblowers?

Answer. I believe that federal employee whistleblowers can help reduce waste and wrongdoing in government. To what extent this is possible is very hard to quantify, but could be significant in any given agency or situation. I believe that employees should be encouraged to come forward with information on waste and wrongdoing by assuring that their allegations are properly evaluated and that the confidentiality of the communication is maintained.

As Inspector General of the Small Business Administration, we have on a number of occasions received confidential allegations of wrongdoing. It is our policy to thoroughly evaluate such allegations and to assure that the persons making the reports are protected. We have had occasion to refer matters to the Office of Special Counsel, and have cooperated with the Office in matters of mutual interest.

Question 5. Some Members of Congress and various federal employee representatives have questioned how well the OSC has carried out its whistleblower responsibilities.

(a) Do you believe the current system is adequately protecting whistleblowers against retaliatory action? If not, what recommendations would you have for change?

(b) How do you view the role of the Special Counsel with respect to whistleblowers? Do you view the role as one of employee advocate?

(c) Certain suggestions for statutory reform have been made, including abolishing the OSC, strengthening its authority, or transferring its functions to the Department of Justice? Do you believe statutory changes are advisable?

Answer. (a) I am not in a position at this time to evaluate in-depth the current system and I do not want to prejudge such an important issue. From my current perspective, I believe the statutory framework is adequate and I would want to have some experience with the Office before making any recommendations for change.

(b) The statute delineates the role of Special Counsel with regard to whistleblowers. The Special Counsel receives allegations, evaluates them, and makes a determination with regard to what action under the statute would be appropriate given the particular factual situation. The Special Counsel has the obligation of assuring that every employee who comes to the Office has a fair and complete evaluation of his/her allegation, that confidentiality, insofar as possible, is accorded such employees, that the employee is informed of the results of the evaluation, and that whatever action called for in the situation is taken. The Special Counsel is an advocate of the employee in the sense that he/she is seeking corrective action by an agency, presenting a case to the MSPB based on an employee's information.

(c) From the perspective I currently have, I do not believe that a radical change in the statute is necessary, nor do I believe that the Office should be abolished. I believe the Office can and has worked effectively, although it has been the subject of controversy. The case law is still developing, and it is too soon, I believe, to change course. However, after experience in the position, I would not hesitate to recommend statutory changes that I felt, based on solid experience as Special Counsel, were necessary to assure that the mission of the Office could be fulfilled.

Question 6. What action will you take at OSC to insure timely processing of cases?

Answer. I will evaluate the system as it currently operates and determine what, if any, adjustments must be made in either personnel allocations or system changes to insure timely processing of cases. In making this evaulation, I would review the performance objectives and productivity goals which are currently in place for personnel and make such adjustments as seemed appropriate.

Question 7. Are there any particular issues which you intend to address or emphasize at the OSC?

Answer. The most important issue in the management of the Office, I believe, is to assure that it is operating fairly, impartially and independently to achieve the statutory objectives. I want to thoroughly review all aspects of the Office and to assure that this goal is achieved.

III. RELATIONS WITH CONGRESS

Question 1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Answer. Yes

Question 2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed.

Answer. Yes

QUESTIONS FOR MARY F. WIESEMAN
FROM SENATOR CARL LEVIN

Question 1. As a general rule, do you agree that the OSC should explain initially to a complainant what he or she has to prove to qualify for relief against alleged prohibited personnel practices? [That is, explain all the legal hurdles which have to be overcome to win a case.]

Answer. As a general rule, I believe it is a better practice to ask a complainant initially to state the facts of the situation which he/she believes involves a prohibited personnel practice. One must be careful not to influence a witness by suggesting what he/she must prove. I also believe that the legal requirements should be explained in the course of eliciting the information from the complainant.

Question 2. Do you agree that the OSC should respect the complainant's right to counsel in connection with OSC proceedings, such as by allowing counsel to participate and make objections during OSC depositions?

Answer. I believe that OSC should respect a complainant's right to have counsel, but I do not believe that this requires permitting counsel to participate and make objections during OSC depositions. The case must be controlled by the attorney with the responsibility for preparing the matter for litigation.

Question 3. As a general rule, would you agree that the Special Counsel should treat agency witnesses and the complainant's witnesses consistently?

Answer. As a general rule, I believe that all witnesses should be treated in a professional manner in an attempt to elicit whatever relevant information they have to offer.

Question 4. Do you agree it is likely that whistleblowers would be discouraged if they feel they will be greeted with skepticism and disbelief at the OSC? Do you agree it is important to keep an open mind toward whistleblowers' allegations?

Answer. Yes, I believe that whistleblowers would be discouraged if they feel they would be greeted with skepticism and disbelief at OSC. I believe that whistleblowers allegations should be fairly evaluated, with no preconceived attitudes or mindset.

Question 5. If, during your experience as Special Counsel you found that the legal hurdles and the burden of proof necessary to prove reprisal against a whistleblower were so difficult as to prevent winning even worthy cases, would you be willing to come to Congress to request a change in the statute?

Answer. Yes

Question 6. Currently, the Special Counsel does not have the authority to appeal cases which he/she loses before the MSPB. Do you think such litigating authority would be useful for the Special Counsel to have?

Answer. Before taking a position on the need for legislative change, I would want to obtain solid experience as Special Counsel on which to base a recommendation.

Question 7. Response to Senator Carl Levin's request for comment on Senate Bill S. 2014, the "Whistleblower Protection Act of 1986."

Answer. As I stated in response to the Pre-Hearing Questions, I do not believe that a radical change in the statute governing the operations of the Office of Special Counsel (OSC) is necessary. Therefore, I cannot support S. 2014 as it is currently drafted.

The major objection I have to the bill is the provision (Section 1212 a) that requires the OSC to represent employees alleging prohibited personnel practices before the Merit Systems Protection Board (MSPB) and the courts. This change would radically alter the operations of the OSC and create, in my view, a number of ethical and operational problems for the OSC. For instance, assuming that an attorney-client relationship is created by this language, the OSC would be required to vigorously pursue all non-frivolous allegations of complainants. A non-frivolous allegation does not necessarily equate with a meritorious claim, so that the OSC may be required to bring actions which lack merit to the detriment of its ability to bring the meritorious claims. Also, this provision may place OSC attorneys as government employees in a conflict of interest position in attempting to represent their clients. This could occur if, during the investigation of the claim, information becomes available which would, in the interest of the government, make continued pursuit of the claim inappropriate. The attorney may, however, be required to continue the representation since withdrawal from the case might prejudice their clients. Also, I foresee that the OSC's ability to gain access to confidential files of other

agencies, for example, investigative reports from Offices of Inspectors General, may be lost if such information is required to be shared with their clients. Finally, the cost of staffing the OSC would dramatically increase under the proposed bill without the assurance that such costs would be justified in terms of a more effective office.

With regard to another major provision of the bill, I believe that the mandatory stay provision of Section 1214(b)(1), which removes all discretion from the Special Counsel, may be problematic in practice, particularly in relation to the provision apparently creating an attorney - client relationship between OSC and complainants.

With regard to the provisions on standards of proof and the right to appeal by OSC, I would not want to recommend such changes without an opportunity to gain experience under the Act as it currently operates.

Finally, I do support the basic objectives of the bill - to protect whistleblowers, and I intend, if confirmed, to vigorously enforce the law in this regard.

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